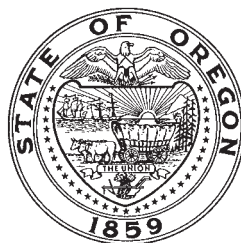


OREGON BULLETIN

Supplements the 2010 *Oregon Administrative Rules Compilation*

Volume 49, No. 8
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Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

The Administrative Rules Unit, Archives Division, Secretary of State publishes the *Oregon Administrative Rules Compilation* and the on-line *Oregon Bulletin*. The *Oregon Administrative Rules Compilation* is an annual print publication containing the complete text of Oregon Administrative Rules (OARs) filed during the previous year through November 15, or the last workday before that if the 15th falls on a weekend or holiday. The *Oregon Bulletin* is a monthly on-line supplement that contains rule text amended after publication of the print *Compilation*, as well as proposed rulemaking and rulemaking hearing notices. The *Bulletin* also publishes certain non-OAR items 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.

How to Cite

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). Example: Oregon Administrative Rules, chapter 166, division 500, rule 0020 (short form: OAR 166-500-0020).

Understanding an Administrative Rule’s “History”

State agencies operate in a dynamic environment of ever-changing laws, public concerns and legislative mandates which necessitate ongoing rulemaking. To track changes to individual rules and organize the rule filing forms for permanent retention, the Administrative Rules Unit has developed for each rule a “history” which is located at the end of the rule text. An administrative rule “history” outlines the statutory authority, statutes implemented and dates of each authorized modification to the rule text. Changes are listed in chronological order and identify in abbreviated form the agency, filing number, year, filing date and effective date. For example: “OSA 4-1993, f. & cert. ef. 11-10-93” documents a rule change made by the Oregon State Archives (OSA). The history notes this was the 4th filing from the Archives in 1993, it was filed on November 10, 1993 and the rule changes became effective on the same date. The most recent change to each rule is listed at the end of the “history.”

Locating the Most Recent Version of an Administrative Rule

The on-line *OAR Compilation* is updated on the first of each month to include all rule actions filed with the Administrative Rules Unit, Secretary of State’s office by the 15th of the previous month, or by the last workday before the 15th if that date falls on a weekend or holiday. The annual printed *OAR Compilation* contains the full text of all rules filed during the previous year through November 15, or the last workday before that if the 15th falls on a weekend or holiday. Subsequent changes to individual administrative rules are listed by rule number in the OAR Revision Cumulative Index which is published monthly in the on-line *Oregon Bulletin*. These listings include the effective date, the specific rulemaking action, and the

issue of the *Bulletin* that contains the full text of the amended rule. The *Bulletin* contains the full text of permanent and temporary rules filed for publication.

Locating Administrative Rules Unit Publications

The *Oregon Administrative Rules Compilation* and the *Oregon Bulletin* are available on-line through the Oregon State Archives web site at <<http://arcweb.sos.state.or.us>>. 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 *Compilation* may be ordered by contacting: Administrative Rules Unit, Archives Division, 800 Summer Street NE, Salem, OR 97310, (503) 373-0701, Julie.A.Yamaka@state.or.us

2009–2010 Oregon Bulletin Publication Schedule

The Administrative Rules Unit accepts proposed rulemaking notices and administrative rule filings Monday through Friday, 8:00 am to 5:00 pm, at the Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310. To expedite the rulemaking process agencies are encouraged file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and submit their filings early in the submission period to meet the following deadlines:

Submission Deadline — Publishing Date

December 15, 2009	January 1, 2010
January 15, 2010	February 1, 2010
February 12, 2010	March 1, 2010
March 15, 2010	April 1, 2010
April 15, 2010	May 1, 2010
May 14, 2010	June 1, 2010
June 15, 2010	July 1, 2010
July 15, 2010	August 1, 2010
August 13, 2010	September 1, 2010
September 15, 2010	October 1, 2010
October 15, 2010	November 1, 2010
November 15, 2010	December 1, 2010

Reminder for Agency Rules Coordinators

Each agency that engages in rulemaking must appoint a rules coordinator and file an “Appointment of Agency Rules Coordinator” form, ARC 910-2003, with the Administrative Rules Unit, Archives Division, Secretary of State. Agencies which delegate rulemaking authority to an officer or employee within the agency must also file a “Delegation of Rulemaking Authority” form, ARC 915-2005. It is the agency’s responsibility to monitor the rulemaking authority of selected employees and to keep the appropriate forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process. Forms are available from the Administrative Rules Unit, Archives Division, 800 Summer Street NE, Salem, Oregon 97301, (503) 373-0701, or are downloadable at <<http://arcweb.sos.state.or.us/banners/rules.htm>>

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.

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OTHER NOTICES

DEQ SEEKS COMMENTS ON PROPOSED APPROVAL OF CLEANUP AT FORMER NW ALUMINUM SECTION 2 PARCEL

COMMENTS DUE: 5 p.m., Tuesday, Aug. 31

PROJECT LOCATION: River Road, The Dalles

PROPOSAL: Based on site investigations, the Oregon Department of Environmental Quality proposes a No Further Action determination following cleanup of contaminated soil in a swale formerly used for discharge of wastewater from the Northwest Aluminum plant on the Section 2 parcel

HIGHLIGHTS: The Section 2 parcel is a 13-acre property formerly owned by Northwest Aluminum Company. It consists of tax lots 100 and 400, and extends from River Road to the Columbia River. The remedial work involved excavation of contaminated soil from drainage channels that were previously associated with Northwest Aluminum's permitted wastewater discharge. The wastewater contained polynuclear aromatic hydrocarbons and arsenic, which were found in high concentrations in the drainage sediment.

During this phase of work, approximately 3,600 tons of contaminated soil were taken to Columbia Ridge Landfill near Arlington, Oregon for disposal. Excavation and removal work ran from September 22 to October 21, 2009.

This work followed a previous cleanup conducted in the fall of 2007. Toward the end of the 2007 work, contamination was found to extend further north on the property than anticipated. Because of time and weather constraints, this phase of work was delayed until 2009.

Sampling following soil removal indicated that contamination had been reduced to safe levels.

HOW TO COMMENT: Send written comments by 5 p.m., Tuesday, August 31, on the proposed remedial action to DEQ Project Manager Bob Schwarz by email, phone or fax. Email: Schwarz.bob@deq.state.or.us; phone 541-298-7255, ext. 230, or 800-452-4011, fax: 541-298-7330.

For more information about the site go to: <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>.

Select "Search Complete ECSI Database". Enter the site ID number where indicated. For this site, the ECSI number is 4557. Hit Submit. On the page that appears, click on the site ID number.

To schedule an appointment to review or to obtain a copy of the staff report, please contact Mr. Schwarz.

THE NEXT STEP: Once the public comment period has closed DEQ will consider all comments before approval of the remedial action. DEQ will hold a meeting to receive comments about this site if requested by 10 or more people or by a group with a membership of 10 or more.

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, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

OPPORTUNITY FOR PUBLIC COMMENT RECORD OF DECISION PACIFIC CREST FEDERAL CREDIT UNION (FORMER METLER BROTHERS SITE, TAX LOT 800)

COMMENT DUE: August 31, 2010

PROJECT LOCATION: 3540 South 6th Street, Klamath Falls, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) extends an opportunity for the public to comment on the DEQ's Record-of-Decision (ROD) for the former Metler Brothers facility (Tax Lot 800), which is located at 3540 South 6th Street in Klamath Falls, Oregon.

The former Metler Brothers (Tax Lot 800) ROD describes relevant information related to site investigations and interprets this infor-

mation for the purpose of selection of the preferred remedial action alternative for the facility. The DEQ's Bend, Oregon office is the repository for the draft ROD.

The administrative file for this facility can be reviewed by contacting Mr. Cliff Walkey, DEQ's project manager located in Bend, Oregon at (541) 388-6146 extension 2003.

HOW TO COMMENT: A public comment period will extend from August 1 through August 31, 2010. Please address all comments and/or inquiries to Mr. Walkey at the following address:

Cliff Walkey
Department of Environmental Quality
475 NE Bellevue Drive, Suite 110
Bend, Oregon 97701-7415
(541) 388-6146, ext. 2003
walkey.cliff@deq.state.or.us

Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

THE NEXT STEP: DEQ will consider all public comments received before making a final decision regarding the selection of a preferred remedial action for the facility.

Request for Comments

DEQ SEEKS COMMENTS ON PROPOSED NO FURTHER ACTION DETERMINATION FOR UIC CLOSURE AT ODOT MAINTENANCE STATION IN MCKENZIE BRIDGE

COMMENTS DUE: 5 p.m., Tuesday, Aug. 31

PROJECT LOCATION: 56377 North Bank Road, McKenzie Bridge, Oregon

PROPOSAL: Based on site investigations, the Oregon Department of Environmental Quality proposes a No Further Action determination following removal of contaminated soil and underground injection control (UIC) structures at ODOT's maintenance yard in McKenzie Bridge.

HIGHLIGHTS: The cleanup work, conducted in September 2006, included removal and offsite disposal of the UIC well, oil/water separator, transfer piping, and associated petroleum-contaminated soil and groundwater. The UIC well consisted of a large-diameter concrete culvert filled with gravel and river rock to a depth of 10 feet below ground surface. The final excavation volume was approximately 15 feet by 15 feet by 12 feet deep.

Approximately 300 gallons of water and sludge were pumped from the oil/water separator. An additional 1,700 gallons of water were removed from the open excavation. These liquid were taken to a recycling facility in Portland run by Thermo Fluids, where it was processed in a separation tower. The oil/product was skimmed and the remaining water then passed through activated carbon before being releasing to the sanitary sewer.

Approximately 91 tons of petroleum-contaminated soil, including the UIC well and oil/water separator debris and sediment, were disposed of at the Short Mountain Landfill in Eugene, Oregon.

The UIC well was replaced with a new water holding tank and water treatment system. Floor drains from the maintenance shop and the vehicle wash pad discharge piping were reconnected to the new replacement storage tank. The roof drains now drain to the ground surface.

Several rounds of groundwater monitoring conducted since the cleanup indicate that residual contamination is below safe levels.

HOW TO COMMENT: Send written comments by 5 p.m., Tuesday, August 31, on the proposed remedial action to DEQ Project Manager Bob Schwarz by email, phone or fax. Email: Schwarz.bob@deq.state.or.us; phone 541-298-7255, ext. 230, or 800-452-4011, fax: 541-298-7330.

For more information about the site go to: <http://www.deq.state.or.us/lq/ECSI/ecsi.htm>. Select "Search Complete ECSI Database.. Enter the site ID number where indicated. For this site, the ECSI number is 5145. Hit Submit. On the page that appears, click on the site ID number.

OTHER NOTICES

To schedule an appointment to review or to obtain a copy of the staff report, please contact Mr. Schwarz.

THE NEXT STEP: Once the public comment period has closed, DEQ will consider all comments before approving the remedial action. DEQ will hold a meeting to receive comments about this site if requested by 10 or more people or by a group with a membership of 10 or more.

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, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

REQUEST FOR COMMENTS PROPOSED REMEDIAL ACTION AT SUNRIVER OWNERS ASSOCIATION AMPHITHEATER SITE

COMMENTS DUE: 5 p.m. on September 1, 2010

PROJECT LOCATION: Beaver Drive, Sunriver, Oregon

PROPOSAL: The Oregon Department of Environmental Quality proposes to recommend a remedial action to address the presence of asbestos containing material in soil at the Sunriver Owners Association Amphitheater Site. DEQ has determined that the recommended remedial action meets state requirements to protect human health and the environment.

HIGHLIGHTS: The recommended remedial action consists of capping the asbestos containing material in-place with clean soil, asphalt, or concrete, and institutional controls to maintain and monitor the cap.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Bend Office, 475 NE Bellevue Drive, Suite 110, Bend, Oregon 97701. To schedule an appointment to review the file or ask questions, please contact Marcy Kirk at 541-633-2009. To access site summary information and the staff report in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 4179 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 4179 in the Site ID/Info column. Send written comments by 5 p.m., September 1, 2010 to Marcy Kirk, Project Manager at the above address or to kirk.marcy@deq.state.or.us.

THE NEXT STEP: DEQ will consider all public comments received by the close of the comment period before making a final decision regarding the recommended remedial action.

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, contact DEQ Communications and Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

People with hearing impairments may call the Oregon Telecommunications Relay Service at 1-800-735-2900. Give the phone number (541-633-2009).

PUBLIC NOTICE PROPOSED REMEDIAL ACTION FOR FORMER NEW BEATTY STORE, BEATTY, OR

COMMENTS DUE: August 30, 2010

PROJECT LOCATION: Beatty, Klamath County

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to issue a Conditional No Further Action decision regarding cleanup activities at the above referenced site based upon an approval of work done to date and a proposed Risk-Based Corrective Action Plan.

HIGHLIGHTS: The former New Beatty Store site consists of approximately 0.9 acres and contains one building currently operated as a restaurant. Petroleum contamination was discovered in both soil and groundwater in May 1999 when four underground storage tanks (USTs) were decommissioned by removal. Initial cleanup efforts included the excavation and treatment on-site of approximately 90 cubic yards of petroleum contaminated soil (PCS). Subsequent site investigations performed by DEQ Eastern Region Cleanup staff and the consultant Hart-Crowser, determined the full nature, magnitude, and extent of contamination both on and off-site.

Based upon the information obtained from the site investigations, a conceptual site model was developed and a risk-based assessment performed by the consultant Hart-Crowser, which recommended that deed restrictions be placed on the extraction and use of shallow groundwater within the impacted areas of the site.

If implemented as proposed, this risk-based corrective action plan will achieve protective conditions at the site as defined in OAR 340-122-0040.

COMMENT: All documents and reports pertaining to the recommendation of acceptance of the proposed remedial action may be reviewed by appointment, at DEQ's office in Bend, 475 NE Bellevue Drive, Suite 110, Bend, OR 97701. To schedule an appointment or make inquiries, please contact the project manager, Joe Klemz at (541)633-2015.

Written comments should be sent to the attention of Mr. Klemz at the address listed above and must be received by August 30, 2010. Questions or comments may also be directed to Mr. Klemz via email at klemz.joe@deq.state.or.us or fax (541)388-8283.

NEXT STEP: DEQ will consider all comments received. A final decision concerning the proposed remedial actions will be made after consideration of public comments.

REQUEST FOR COMMENT PROPOSED CLEANUP ACTIONS REFORESTATION SERVICES, INC., SALEM, OREGON

COMMENTS DUE: August 30, 2010

PROJECT LOCATION: 5669 Commercial St SE, Salem, Oregon
Proposal: The Department of Environmental Quality (DEQ) is proposing a series of measures to address contamination present at the Reforestation Services, Inc (RSI) property. The proposed cleanup actions include focused excavation and off-site disposal of contaminated soil and solid wastes buried in trenches at the site, and engineering controls (e.g., well abandonment) to prevent human contact with groundwater containing low levels of solvents.

HIGHLIGHTS: RSI has been in the business of vegetation management since the 1950s using helicopters on forestlands and hi-rail tankers and off-track trucks on railroad right-of-way property. During the 1970s, RSI hired an excavation company to dig two disposal trenches on site to crush and dispose of various materials including discarded pesticide containers. Allegedly, chemicals had been present in some of these containers and may have been released when they were crushed.

A draft staff report outlining DEQ's Recommended Remedial Action is posted in DEQ's Environmental Cleanup Site Information (ECSI) database as explained below.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eugene office at 165 E 7th Ave, Ste 100, Eugene, OR 97401. To schedule an appointment to review the file or to ask questions, please contact Bill Mason at (541) 687-7427. Summary information and a copy of the document referenced above is available in DEQ's ECSI database on the Internet. To review this material, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, then enter 4928 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 4928 in the Site ID/Info column. To be considered, written comments should be sent to Bill Mason, Project Manager, at the address listed above or by email at mason.bill@deq.state.or.us, and must be received by 5:00 PM on Monday, August 30, 2010. A public meeting will be held upon written request by ten or more persons or by a group with a membership of 10 or more.

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 proposed remedial actions taken at the site. A public notice of DEQ's final decision will be issued in this publication. **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, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us. People with hearing impairments may call DEQ's TTY number, (800) 735-2900 or 711.

OPPORTUNITY TO COMMENT PROPOSED CONDITIONAL NO FURTHER ACTION MADARIAGA CHEVRON SERVICE STATION JORDAN VALLEY, OREGON

COMMENT DUE: August 31, 2010

PROJECT LOCATION: 607 Main Street, Jordan Valley

PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a Conditional No Further Action (NFA) determination for Madariaga Chevron Service Station site located at 607 Main Street in Jordan Valley, Oregon. The site was an operating petroleum service station.

The Leaking Underground Storage Tank (LUST) Program has reviewed site assessment and remedial activities performed at the site. The site is proposed for a risk-based closure and issuance of a Conditional No Further Action determination. All of the potential exposure concerns were addressed during the development of the site-specific conceptual site model or through institutional controls in the form of an Easement and Equitable Servitude (E&ES).

The E&ES will include the following restrictions: no beneficial use of groundwater; no residential use; and the placement of a vapor barrier beneath any buildings constructed on the property. A Contaminant Media Management Plan has been provided to the city and the property owners within the impacted area.

Additional information concerning site-specific investigations and remedial actions is available in DEQ's LUST database located on the web at <http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp> under LUST Number 23-89-0003.

Site specific information is also available by contacting Katie Robertson, DEQ's project manager for this site. The Administrative File for this facility is located at DEQ's Pendleton office, and can be reviewed in person by contacting project manager at the number below to arrange for an appointment.

HOW TO COMMENT: The public comment period will extend from August 1 to 31, 2010. Please address all comments and/or inquiries to the following address:

Katie Robertson
Department of Environmental Quality
700 SE Emigrant, Suite 330, Pendleton, OR 97801
(541) 278-4620
robertson.katie@deq.state.or.us

Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

THE NEXT STEP: DEQ will consider all public comments received before making a final decision regarding the "Conditional No Further Action" determination.

CHANCE TO COMMENT ON... PROPOSED CONDITIONAL NO FURTHER ACTION DECISION FOR THE JOEL OLSON TRUCKING SITE

COMMENTS DUE: August 31, 2010, 5 pm

PROJECT LOCATION: The site is located at 17905 Beaver Falls Road, Clatskanie, Oregon.

PROPOSAL: Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for a "Conditional No Further Action" determination for the Joel Olson Trucking site and termination of the existing Letter Agreement.

HIGHLIGHTS: The 1.7 acre Joel Olson Trucking site is located in Clatskanie adjacent to the Beaver Slough and Clatskanie River flood plain. Previous site uses included a machine shop and a commercial dairy. The site is mostly unpaved with one large building in the center of the site. Sources of contamination to stormwater runoff include leaks and spills from truck repair/washing and underground and above ground storage tanks. A heating oil tank, likely used during dairy operations, was discovered during a 2007 soil removal.

JOT entered into a Letter Agreement with DEQ in 2004 and conducted a site investigation of potential sources of contamination to soil and groundwater. Investigation results indicate the presence of total petroleum hydrocarbons, polynuclear aromatic hydrocarbons, volatile organic chemicals and metals in surface and subsurface soil, and at lower concentrations in groundwater. Risk assessment results indicate that TPH and PAHs are present in subsurface soil at concentrations that exceed the TPH soil matrix concentration of 100 mg/kg, risk based criteria for direct contact for occupational workers, and 10,000 mg/kg for combined diesel and oil concentrations, in the northwest truck wash area located at the current stormwater outfall. Concentrations of PAHs and lead in soil also exceed ecological screening criteria.

The Expanded Preliminary Assessment Report recommended a soil removal at the northwest truck wash area. The removal action was completed in August 2007 and involved excavation and offsite disposal of 190 tons of TPH and PAH contaminated soil, 300 gallons of oil removed from a discovered underground boiler fuel tank and piping, and the oil tank and piping and associated backfill soil. An estimated 130 cubic yards of inaccessible contaminated subsurface soil exceeding human health and ecological risk screening criteria remains in the removal area, below the water table and adjacent to the foundation of the onsite building. The residual contamination is present at depth and is not expected to migrate to surface water or present a threat to site occupational workers or ecological receptors if left in place and properly managed with a soil management plan.

DEQ has concluded that no further actions are warranted for the JOT site because risk based cleanup criteria for human and ecological receptors are not exceeded at ground surface or in groundwater. In addition, a soil management plan has been developed and approved by DEQ to provide guidance for future site development that may be conducted in the vicinity of the soil removal or that may encounter other areas of unanticipated contamination that may pose a risk to human or ecological receptors. All work under the existing Letter Agreement has been completed and, with no further action required at the site, the Agreement will be terminated upon final payment of DEQ oversight costs.

HOW TO COMMENT: You can review the administrative record for the proposed CNFA at DEQ's Northwest Region east side office located at 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon. For an appointment to review the files call (503)667-8414, extension 55026; toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Bruce Gilles, Cleanup Program Manager, DEQ Northwest Region East Side Office, 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon, 97030 or via email at: gilles.bruce@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on August 31, 2010. This notice will also be published in the local newspaper The Clatskanie Chief.

DEQ will hold a public meeting to receive verbal comments if 10 or more persons, or a group with membership of 10 or more requests such a meeting. Interest in holding a public meeting must be submitted in writing to DEQ. If a public meeting is held, a separate public notice announcing the date, time, and location of any public meeting would be published in this publication.

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or

OTHER NOTICES

another format. To make these arrangements, contact DEQ Communications and Outreach at (503) 229-5696 or toll free in Oregon at (800) 452-4011. People with hearing impairments may call DEQ's TTY number, (503)229-5471.

THE NEXT STEP: DEQ will consider all public comments received by the deadline. In the absence of comments, DEQ will issue the Conditional No Further Action.

NOTICE FOR COMMENT ON PROPOSED DELISTING ICN PHARMACEUTICALS SITE

COMMENTS DUE: August 31, 2010

PROJECT LOCATION: 6060 NE 112th Ave, Portland, OR

PROPOSAL: As required by OAR 340.122.0078, the Department of Environmental Quality (DEQ) invites public comment on the proposal to remove the ICN Pharmaceuticals site from the Confirmed Release List and Inventory of sites requiring further action to address environmental issues.

HIGHLIGHTS: Between 1961 and 1980 United Medical Laboratory and subsequently ICN used the property at 6060 NE 112th Ave. as a mail-order clinical laboratory. ICN Pharmaceuticals shut down the laboratory in 1980 and demolished buildings during 1993 and 1994. DEQ investigations at the site revealed high concentrations of volatile organic contaminants such as trichloroethene, dichloroethene, vinyl chloride, benzene and toluene in groundwater in the vicinity of a former dry well located on the property.

Cleanup of contaminated groundwater at the site using a six-phase electrical resistive heating and vapor extraction process was conducted between May 2000 and November 2001. The existing treatment system vents and wells were then used to inject air into the groundwater with the intent of improving conditions for biodegradation of the remaining contaminants.

Groundwater monitoring data collected during and after cleanup indicated that the cleanup technologies were successful in reducing groundwater contamination to levels protective of human health and the environment and, in October 2005, DEQ issued a No Further Action determination with the exception of long-term monitoring to ensure contaminant concentrations remained stable or declined. In the Fall 2009, ICN completed 5 years of post remediation monitoring. Data collected documents stable or decreasing trends in groundwater contamination. DEQ has therefore concluded that no additional monitoring is required and the site can be removed from the confirmed release list and cleanup site Inventory.

HOW TO COMMENT: Site files supporting the decision to remove the site from the Inventory are available for public review at DEQ's Northwest Region Office in Portland. To schedule an appointment to review files in call (503) 229-6729. The DEQ Project Manager is Jennifer Sutter, (503) 229-6148. Written comments should be sent to the Project Manager at the DEQ, Northwest Region, 2020 SW 4th Ave., Portland, OR 97201 or sutter.jennifer@deq.state.or.us by August 31, 2010.

THE NEXT STEP: DEQ will consider all public comments and the Regional Administrator will make and publish the final decision after consideration of these comments.

REQUEST FOR COMMENTS PROPOSED CLEANUP APPROACH FOR PACIFICORP YOUNGS BAY UPLAND AREA

COMMENTS DUE: 5 p.m., August 31, 2010

PROJECT LOCATION: 1224 West Marine Drive Astoria, OR

PROPOSAL: The Department of Environmental Quality invites public comment on the proposed cleanup approach for contaminated soil at the PacifiCorp property located on the north side of Youngs Bay. In February 2005, DEQ issued a record of decision for a removal action that addressed shoreline and off-shore contamination associated with the site. The subject proposal addresses residual contamination and previously capped contamination in the upland portion of the site. DEQ proposes that contaminated soil outside the existing capped area be excavated and contained onsite in an exten-

sion of the existing cap. A small portion of this material meeting regulatory hot-spot criteria would be transported off-site for disposal in a permitted landfill.

HIGHLIGHTS: The PacifiCorp-Youngs Bay site consists of an upland area that is approximately 4.5 to 5 acres in size, a shoreline slope that separates the upland from the intertidal area, and an off-shore zone of intertidal mudflats that extends southward several hundred feet into Youngs Bay. In the summer of 2005 PacifiCorp removed a portion of the off-shore tar and capped the remaining tar as described in the DEQ record of decision. Maintenance of the in-water cap continues today.

Investigation of the site began in 1984 when PacifiCorp employees observed oily materials emerging through an asphalt surface in the site's southeast corner. Elevated concentrations of polycyclic aromatic hydrocarbons, benzene, metals, and PCBs were detected in site soils. In 1987, PacifiCorp demolished the majority of site structures and placed this material in the southeastern portion of the site. This area was then covered with clean fill and the entire site was fenced. In 2000, DEQ re-evaluated the site information and recommended additional investigation. Additional soil sampling revealed that residual polycyclic aromatic hydrocarbons were present at concentrations that posed a potential risk exceeding DEQ's protective standards for commercial/industrial site use. More detailed characterization conducted in 2009 provided sufficient data to define areas of soil contamination that would need to be remediated to reduce risks to protective levels.

DEQ is proposing that the most contaminated soil be excavated and material meeting hot spot criteria disposed of at a permitted landfill. Remaining contaminated soil would be contained onsite in an extension of the existing capped area. Excavated areas would be backfilled with clean sand and soil and hydro seeded. Soil would be excavated to the extent that remaining concentrations would be low enough to be safe for commercial/industrial site use.

The proposed remedy is considered to be consistent with Oregon rule and statute and, if properly implemented, protective of public health and the environment.

HOW TO COMMENT: A DEQ staff report outlining the proposed cleanup approach will be available for public review at the Astoria Public Library (450 10th St., Astoria), DEQ's North Coast Branch Office in Warrenton (65 N. Highway 101, Suite G), and DEQ's Northwest Region Office in Portland beginning August 2, 2010. To schedule an appointment to review files in DEQ's Northwest Region office, call (503) 229-6729. The DEQ Project Manager is Jennifer Sutter, (503) 229-6148. Written comments should be sent to the Project Manager at the DEQ, Northwest Region, 2020 SW 4th Ave., Portland, OR 97201 or sutter.jennifer@deq.state.or.us by August 31, 2010. For more information contact Jennifer at (503) 229-6148.

THE NEXT STEP: DEQ will consider all public comments and the Regional Administrator will make and publish the final decision after consideration of these comments.

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, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

People with hearing impairments may call DEQ's 711.

PUBLIC NOTICE DEQ SELECTS CLEANUP ACTIONS FOR POST OFFICE DISTRIBUTION CENTER IN DOWNTOWN PORTLAND

PROJECT LOCATION: 715 NW Hoyt St., Portland, OR

PROPOSAL: The Oregon Department of Environmental Quality has selected cleanup actions to address soil and groundwater contamination at the United States Postal Service Processing and Distribution Center in downtown Portland. Cleanup actions required by DEQ are presented in the July 2010 record of decision for the site available at DEQ or on DEQ's website.

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HIGHLIGHTS: The approximately 13-acre post office property is located in an area of mixed commercial and residential development in downtown Portland. All outgoing mail for the State of Oregon is processed through the facility. The site contains three buildings (processing and distribution center, vehicle maintenance facility, and parking garage) with the remainder covered by paving. Postal operations began on the site in the early 1960s. From the late 1800s to 1950s, the site was used as a rail yard. A gas manufacturing plant operated in the northwest site corner from approximately 1893 to the 1930s. Multiple phases of site investigation have been completed on-site. Since 1999, DEQ Voluntary Cleanup Program has been overseeing the investigations. Investigation has identified wide-spread contamination of shallow soil with arsenic, and lesser contamination by other metals and organic contaminants. In the northwest site corner, there is deeper soil and groundwater contamination associated with former gas plant. Risk assessment work (finalized 2008) has identified two 'use' scenarios for the site, each of which poses different risks.

Under continued post office operation, risk is limited to utility workers provided that site buildings and paving remain intact. If the site is redeveloped, there is a greater risk posed to potential site occupants including commercial workers and urban residents. Possible cleanup options for the site were evaluated in the 2008 Focused Feasibility Study completed for DEQ.

Based on this document, and an independent analysis of site conditions and risk, DEQ has selected the following remedial actions to address contamination at the site: a) for existing site use and continuation of that site use by the U.S. Postal Service, maintenance of site buildings and paving to prevent post office worker exposure to contaminated soil, and use of a notification plan and protective equipment to prevent on-site utility workers from exposure to soil and groundwater contamination; b) for the hypothetical redevelopment of the site, removal of high concentration (hot spot) soil, installation of barriers to prevent vapor migration (as needed), capping of the site to prevent contact with contaminated soil, and use of a notification plan and personal protective equipment to prevent utility and construction worker exposure to site contamination. The selected remedy is considered to be consistent with Oregon rule and statute and protective of human health.

FOR MORE INFORMATION: The project file may be reviewed by appointment at DEQ's Northwest Region office at 2020 SW Fourth Avenue, Suite #400, Portland, OR 97201. To schedule an appointment to review the file or to ask questions, please contact Dawn Weinberger at (503) 229-6729. Summary information and a copy of DEQ's Record of Decision are available at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCcontroller.aspx?SourceId=2183&SourceIdType=11>

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, contact DEQ Communications & Outreach (503) 229-5696 or toll free in Oregon at (800) 452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

People with hearing impairments may call 711.

REQUEST FOR COMMENTS PROPOSED CONDITIONAL NO FURTHER ACTION DETERMINATION REGARDING JH BAXTER EASTERN YARD, EUGENE, LANE COUNTY

COMMENTS DUE: August 30, 2010

LOCATION OF CONTAMINATION: The site is located at located at 85 Baxter Street, Eugene, Oregon.

HIGHLIGHTS: Historical wood treating activities contaminated shallow soil and groundwater at the JH Baxter site with arsenic and pentachlorophenol. The eastern 11 acres of the site are only contaminated with arsenic, which is tightly bound up in the soils and does not leach to groundwater at the site. Arsenic contaminated soil at the site poses an unacceptable risk to site workers by direct exposure. In 2007, Baxter installed a cap over the eastern 11 acres of the

site. The cap consisted of geotextile fabric overlain by a foot of clean gravel. This cap eliminates the risk posed by the contaminated soil on this portion of the site. However, in order to be an effective remedy for the problem, the cap will require regular inspection and maintenance under a deed restriction.

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) has concluded that there is no current unacceptable risk to site workers or nearby residents from contaminated soils beneath the eastern 11 acres of the site. DEQ proposes to prepare a deed restriction requiring Baxter or other future owners to maintain the cap indefinitely. The deed restriction will also require that the area be fenced off from the rest of the site to prevent re-contaminating it. Once this remedy is in place, DEQ proposes preparing a conditional no further action determination for the eastern portion of the site, requiring long term maintenance of the cap and recording of the deed restriction. On August 1 through August 30, 2010, DEQ is accepting comments from the public on the proposed determination. It is important to understand that this determination only applies to the eastern 11 acres of the site and not to the central area of the site where the wood treatment or storage currently occurs.

HOW TO COMMENT: A staff report describing the proposed determination is available at DEQ's Western Region Office, at 165 E 7th, Suite 100, Eugene, Oregon 97401, or electronically by request to brown.geoff@deq.state.or.us. To review files at DEQ's office, please contact DEQ's file review coordinator at (541) 686-7819 to make an appointment. Written comments may be submitted to Geoff Brown, DEQ Cleanup Project Manager, by email at brown.geoff@deq.state.or.us; by mail at DEQ, 167 E 7th, Suite 100, Eugene, Oregon 97401; or by fax at 541-686-7551. Comments must be submitted in writing not later than August 30, 2010. Upon written request by 10 or more persons or by a group having 10 or more members submitted by August 30, 2010, DEQ will conduct a public meeting for the purpose of receiving verbal comments regarding the proposed settlement.

THE NEXT STEP: DEQ will review and consider all comments received during the comment period. After considering public comments, DEQ will accept, modify, or reject the proposed remedy for the site. If DEQ accepts the proposed remedy, the next step will be to prepare a letter of No Further Action for the site.

REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DETERMINATION REGARDING THE RAVIA PROPERTY HEATING OIL RELEASE, DAYTON, YAMHILL COUNTY

COMMENTS DUE: August 30, 2010

LOCATION OF CONTAMINATION: The site is located at located at 1700 Wallace Road, Dayton, Oregon.

HIGHLIGHTS: An underground heating oil tank at the property leaked, causing contamination to soil and groundwater, which was discovered in 2006. After excavation of contaminated soils in 2007, remaining soil impact and shallow groundwater were treated using chemical oxidants. Post-cleanup conditions at the site do not pose a risk to future residents or ecological receptors.

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) has concluded that there is no unacceptable risk to current or future site users and no further action is required for the property. On August 1 through August 30, 2010, DEQ is accepting comments from the public on the proposed determination.

HOW TO COMMENT: A staff report describing the proposed determination is available at DEQ's Western Region Office, at 165 E 7th, Suite 100, Eugene, Oregon 97401, or electronically by request to brown.geoff@deq.state.or.us. To review files at DEQ's office, please contact DEQ's file review coordinator at (541) 686-7819 to make an appointment. Written comments may be submitted to Geoff Brown, DEQ Cleanup Project Manager, by email at brown.geoff@deq.state.or.us; by mail at DEQ, 167 E 7th, Suite 100, Eugene, Oregon 97401; or by fax at 541-686-7551. Comments must be submitted in writing not later than August 30, 2010. Upon written request by 10 or more persons or by a group having 10 or more members submitted by August 30, 2010, DEQ will conduct a pub-

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lic meeting for the purpose of receiving verbal comments regarding the proposed settlement.

THE NEXT STEP: DEQ will review and consider all comments received during the comment period. After considering public comments, DEQ will accept, modify, or reject the proposed remedy for the site. If DEQ accepts the proposed remedy, the next step will be to prepare a letter of No Further Action for the site.

PROPOSED CONDITIONAL NO FURTHER ACTION GEM STOP #50 & #52, LA GRANDE, OREGON

COMMENT DUE: August 31, 2010

PROJECT LOCATION: 2706 & 2614 Island Avenue, La Grande
PROPOSAL: Pursuant to Oregon Revised Statute (ORS) 465.315, the Oregon Department of Environmental Quality (DEQ) is proposing to issue a Conditional No Further Action (NFA) determination for the Gem Stop site that consists of two gasoline service stations located at 2706 Island Avenue (Gem Stop 50) and 2614 Island Avenue (Gem Stop 52) in La Grande, Oregon. These sites are operating petroleum service stations.

The Voluntary Cleanup Program has reviewed site assessment and remedial activities performed at the site. The site is proposed for a risk-based closure and issuance of a Conditional No Further Action determination. All of the potential exposure concerns were addressed during the development of the site-specific conceptual site model or will be addressed through institutional controls in the form of deed

notices in the form of a Notice of Environmental Contamination on impacted off-site properties and in the form of Easement and Equitable Servitudes (E&ES) on the two on-site properties. The E&ES will prohibit beneficial use of groundwater.

Additional information concerning site-specific investigations and remedial actions is available through DEQ's Environmental Cleanup Site Information (ECSI) database located at <http://www.deq.state.or.us/lq/ecsi/ecsi.htm> under Site ID 3886.

Site specific information is also available by contacting Katie Robertson, DEQ's project manager for this site. The Administrative File for this facility is located at DEQ's Pendleton office, and can be reviewed in person by contacting project manager at the number below to arrange for an appointment.

HOW TO COMMENT: The public comment period will extend from August 1 to 31, 2010. Please address all comments and/or inquiries to the following address:

Katie Robertson
Department of Environmental Quality
700 SE Emigrant, Suite 330, Pendleton, OR 97801
(541) 278-4620
robertson.katie@deq.state.or.us

Upon written request by ten or more persons or by a group with a membership of 10 or more, a public meeting will be held to receive verbal comments.

THE NEXT STEP: DEQ will consider all public comments received before making a final decision regarding the "Conditional No Further Action" determination.

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 or in writing 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. Written and 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 Licensed Social Workers Chapter 877

Rule Caption: Proposed rules implementing Senate Bill 177 (2009), and House Bill 2345 (2009).

Date:	Time:	Location:
9-21-10	8 a.m.	3218 Pringle Rd. SE, 2nd Floor Conference Rm. Salem, OR

Hearing Officer: Rebecca Rasmussen, Board Chair

Stat. Auth.: ORS 675.510–675.600, 675.990–675.994, 676.150 & 676.15 - 676.177

Other Auth.: SB 177 (2009), HB 2059 (2009) & HB 2345 (2009)

Stats. Implemented: ORS 675.510–675.600, 676.150 & 675.990 - 675.994

Proposed Adoptions: 877-001-0006, 877-001-0015, 877-001-0025, 877-005-0101, 877-015-0105, 877-015-0108, 877-015-0131, 877-015-0136, 877-015-0146, 877-015-0155, 877-040-0018

Proposed Amendments: 877-001-0005, 877-010-0005, 877-010-0010, 877-010-0015, 877-010-0020, 877-010-0025, 877-010-0030, 877-010-0040, 877-010-0045, 877-020-0000, 877-020-0005, 877-020-0008, 877-020-0010, 877-020-0016, 877-020-0046, 877-020-0055, 877-022-0005, 877-025-0001, 877-025-0006, 877-025-0011, 877-025-0016, 877-025-0021, 877-030-0025 through 877-030-0100, 877-040-0000, 877-040-0003, 877-040-0010, 877-040-0050

Proposed Repeals: 877-020-0015, 877-020-0020, 877-020-0030, 877-030-0050, 877-035-0000 – 877-035-0015

Last Date for Comment: 9-21-10, 10 a.m.

Summary: Implements Senate Bill 177 (2009) provisions that become law on January 1, 2011, including requirements for application and renewal for new non-clinical licensing options that become available then: registered Bachelors of Social Work – RBSW, and Licensed Masters of Social Work – LMSW. Moves all licenses issued by the Board, except Clinical Social Work Associates, to 2-year licensure. Defines certain terms used in the definition of clinical social work in ORS 675510(2). Adopts rule exempting MSW students engaging in clinical social work from the mandatory licensure

requirement for clinical social work. Consolidates mandatory reporting requirements, including those required by House Bill 2059 (2009), into one section of the Board's Ethics Code. Applies the Board's Ethics Code to all regulated social workers. Adopts the temporary rule to implement House Bill 2345, which eliminates the Board's Impaired Professional's Program. Adopts the definition of impairment required by HB 2345, and related changes to the complaint management rules.

Rules Coordinator: Martin Pittioni

Address: Board of Licensed Social Workers, 3218 Pringle Rd. SE, Suite 240, Salem, OR 97302

Telephone: (503) 373-1163

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Board of Nursing Chapter 851

Rule Caption: Rules to provide consistent language regarding violations relating to impairment.

Date:	Time:	Location:
9-16-10	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Patricia Markesino, Board President

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150

Proposed Amendments: 851-045-0070

Last Date for Comment: 9-14-10, 5 p.m.

Summary: These rules cover the standards and scope of practice for the licensed practical nurse and registered nurse. This new proposed rule will provide consistent language regarding violations relating to impairment.

Rules Coordinator: KC Cotton

Address: Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

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Rule Caption: Clarification provided to rules relating to nurse practitioner continuing education and certification.

Date:	Time:	Location:
9-16-10	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Patricia Markesino, Board President

Stat. Auth.: ORS 678.380

Stats. Implemented: ORS 678.380

Proposed Amendments: 851-050-0138

Last Date for Comment: 9-14-10, 5 p.m.

Summary: These rules cover nurse practitioners. This rule amendment is to provide clarification to the rules relating to nurse practitioner continuing education and certification.

Rules Coordinator: KC Cotton

Address: Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

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Rule Caption: Rules identify accreditation bodies for continuing education presented to meet CNS certification and renewal requirements.

Date:	Time:	Location:
9-16-10	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Patricia Markesino, Board President

Stat. Auth.: ORS 678.372

Stats. Implemented: ORS 678.372

Proposed Amendments: 851-054-0010, 851-054-0040, 851-054-0050, 851-054-0055

Last Date for Comment: 9-14-10, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: These rules cover the Clinical Nurse Specialists. These rule amendments specify accreditation bodies for continuing education presented to meet certification and renewal requirements.

This hearing was originally scheduled for June 17, 2010. That hearing date has been canceled and this notice reschedules that hearing for September 16, 2010.

Rules Coordinator: KC Cotton

Address: Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

Rule Caption: Rules to provide consistent language regarding to violations relating to impairment.

Date:	Time:	Location:
9-16-10	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Patricia Markesino, Board President

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.150

Proposed Amendments: 851-063-0090

Last Date for Comment: 9-14-10, 5 p.m.

Summary: These rules cover standards and authorized duties for certified nursing assistants and certified medication aides. This rule amendment provides consistent language regarding violations relating to impairment.

Rules Coordinator: KC Cotton

Address: Board of Nursing, 17938 SW Upper Bones Ferry Rd., Portland, OR 97224

Telephone: (971) 673-0638

Board of Optometry Chapter 852

Rule Caption: Establishes requirements for optometry business entity organizations.

Date:	Time:	Location:
9-10-10	1 p.m.	1900 Hines St. SE, Mezzanine Level Salem, OR 97302

Hearing Officer: Michelle Monkman, O.D.

Stat. Auth.: ORS 58, 63 & 683

Stats. Implemented: ORS 58.367, 63.074 & 683.270(11)

Proposed Adoptions: 852-020-0045

Last Date for Comment: 9-10-10

Summary: Establishes requirements for optometry business entity organization.

Rules Coordinator: David W. Plunkett

Address: Board of Optometry, PO Box 13967, Salem, OR 97309

Telephone: (503) 399-0662

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Adopts guidelines for setting parole deferral periods.

Date:	Time:	Location:
8-26-10	9 a.m.	2575 Center St. NE, Rm. 108 Salem, OR 97301-4621

Hearing Officer: Aaron Felton

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660

Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115 & 2009 OL Ch. 660

Proposed Adoptions: 255-062-0006, 255-062-0011, 255-062-0016, 255-062-0021, 255-062-0026, 255-062-0031

Last Date for Comment: 8-26-10

Summary: Division 62 rules put in place procedures for implementing statutory changes that: (1) prohibit the Board from holding a subsequent hearing after the Board denies a petition for a change

in terms of confinement of an inmate convicted of aggravated murder or murder in less than two years, or more than 10 years, from the denial date; and (2) prohibit the Board from granting a release date in less than two years, or more than 10 years, after the Board denies a firm parole or post-prison supervision release date for certain inmates.

Rules Coordinator: Michelle Mooney

Address: Board of Parole and Post-Prison Supervision, 2575 Center St. NE, Suite 100, Salem, OR 97301

Telephone: (503) 945-0914

Rule Caption: Amending Division 30 to update the guidelines of when victims and District Attorneys are provided notice of upcoming hearings.

Stat. Auth.: ORS 144.120(7) & 144.130

Stats. Implemented: ORS 144.120(7) & 144.130

Proposed Amendments: 255-030-0013

Last Date for Comment: 8-23-10

Summary: Division 30 rules provide guidelines for the procedure of notifying victims and the District Attorney of all upcoming hearings. This amendment will update the rule to reflect current Board practice of providing notice at least 90 days before all hearings.

Rules Coordinator: Michelle Mooney

Address: Board of Parole and Post-Prison Supervision, 2575 Center St. NE, Suite 100, Salem, OR 97301

Telephone: (503) 945-0914

Board of Psychologist Examiners Chapter 858

Rule Caption: Rule corrections and updates; Board per diem; notice of proposed rulemaking requirements.

Stat. Auth.: ORS 675.010-675.150

Stats. Implemented: ORS 675.100(5) & 675.110(17)

Proposed Amendments: 858-010-0005, 858-010-0007, 858-010-0010, 858-010-0015, 858-010-0016, 858-010-0017, 858-010-0020, 858-010-0030, 858-010-0034, 858-010-0036, 858-010-0055, 858-020-0045, 858-030-0005, 858-040-0015, 858-040-0026, 858-040-0035, 858-040-0036, 858-040-0055

Last Date for Comment: 8-25-10, Close of Business

Summary: Sets a \$50 a day per diem for Board members for Board meetings; deletes requirement that notice of proposed rulemakings be sent to the Associated Press; other minor housekeeping items.

Rules Coordinator: Debra Orman McHugh

Address: 3218 Pringle Rd. SE, #130, Salem, OR 97302

Telephone: (503) 373-1155

Construction Contractors Board Chapter 812

Rule Caption: New definitions, larger bond requirements, lapsed license, close untimely complaints, lead-based paint, continuing education.

Date:	Time:	Location:
8-17-10	11 a.m.	West Salem Roth's IGA 1130 Wallace Rd., Santiam Rm. Salem, OR

Hearing Officer: Rob Hernandez

Stat. Auth.: ORS 670.310, 701.068, 701.085 (2005), 701.088, 701.124, 701.126, 701.235, 701.350, & 701.515

Stats. Implemented: ORS 183.415, 183.460, 183.470, 183.480, 701.005, 701.056, 701.063, 701.068, 701.085 (2005), 701.088, 701.094, 701.124, 701.126, 701.133, 701.140, 701.145, 701.146, 701.350, 701.355, & 701.505-701.520

Proposed Adoptions: 812-002-0390, 812-007-0302, 812-021-0016

Proposed Amendments: 812-003-0175, 812-003-0290, 812-003-0330, 812-004-0260, 812-004-0400, 812-004-0550, 812-005-0210, 812-007-0020, 812-008-0074, 812-020-0055, 812-021-0025

Last Date for Comment: 8-17-10, 11 a.m.

NOTICES OF PROPOSED RULEMAKING

Summary: • 812-002-0390 is adopted to add a general definition for the term “key employee” to the definition section of the rules, Division 2.

• 812-003-0175 is amended to provide for greater protection when a residential general or residential specialty contractor with unpaid construction debts attempts to relicense as a residential limited contractor and thereby avoid the increased bond requirements.

• 812-003-0290 is amended to conform to ORS 701.063(4).

• 812-003-0330, 812-004-0260, and 812-004-0400, are amended to change the process the CCB uses to handle untimely complaints. Rather than issue an order of dismissal subject to contested case review, the agency will close the complaints. The result will be an order in other than a contested case. As such, review is by the circuit court.

• 812-004-0550 is amended to eliminate dismissal for untimely filing from agency proposed default orders. Those orders are subject to contested case hearings. This is part of other changes to treat untimely claims as closures, subject to review as orders in other than contested cases.

• 812-005-0210 is amended to provide for greater protection when a residential general or residential specialty contractor with unpaid construction debts attempts to re-license as a residential limited contractor and thereby avoid the increased bond requirements.

• 812-007-0020 has the following amendments: 812-007-0020(2) is amended to separate the treatment of training providers for LBP activities from those for LBP renovation. The former are limited to providers accredited by the Health Division. The latter may include those accredited by the EPA. 812-007-0020 is amended to add new definition for the terms: “certified renovator”, “component or building component”, and “recognized test kit”. These definitions parallel those used by the EPA in 40 CFR §745.83 and the DHS rules in 333-070-0085. The definitions are necessary because the terms are used in CCB’s new rule, OAR 812-007-0302. OAR 812-007-0020 formerly (5) is amended to correct an error and is renumbered (6). Child-occupied facilities are those used by children “under age six” not “six years of age or under.” The correct standard is taken from the federal regulation, 40 CFR §745.83, and is used in the Oregon Health Division’s definition rule, OAR 333-070-0085(9). The correct language is also used in other parts of CCB’s own rules (e.g., the remainder of the definition contains the language “under age six.”).

• 812-007-0302 is adopted to parallel a similar rule in the EPA regulations, 40 CFR § 745.82, and the DHS rules, OAR 333-070-0075(3). The rule provides for two significant exceptions from compliance with the LBP renovation rules. The first is where a lead assessor lead inspector determines, in writing, that components affected by a renovation do not contain (except as allowed) lead-based paint. The second is where a certified renovator, using an approved test kit, determines that components affected by a renovation do not contain (except as allowed) lead-based paint.

• 812-008-0074 is amended revise the education provider requirements. If an education provider is “doing business” (for profit) in Oregon and is a business entity from another state (e.g., foreign corporation or LLC), it must file an application for authority with the Corporation Division to do business. All businesses need to register their ABNs. These rules require businesses follow these basic laws and demonstrate their compliance on the application form.

• 812-020-0055 is adopted to remove the definition of “key employee” from the chapter on commercial contractor continuing education. The definition should be inclusive for all laws and rules relating to commercial contractor key employees. See 812-002-0390.

• 812-021-0016 is adopted to “establish reasonable fees for courses and instruction provided by the board” as authorized in ORS 701.126(1). CCB has determined that \$35/hour is a reasonable fee. For persons that purchase three or more one-hour courses, CCB will reduce the fee to \$33/hour. CCB may charge for processing, shipping and handling

• 812-021-0025 is amended to require that BEST providers would post a \$20,000 surety bond as a requirement for becoming an

approved provider. It was not contemplated that the bonding requirement would cover providers of training in building codes or “green” building practices. CCB proposes to amend the rule to reflect this intent.

Rules Coordinator: Catherine Dixon

Address: Construction Contractors Board, 700 Summer St. NE, Suite 300, Salem, OR 97310

Telephone: (503) 378-4621, ext. 4077

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Department of Administrative Services Chapter 125

Rule Caption: Qualified Rehabilitation Facility (QRF) Program Rules.

Date:	Time:	Location:
8-17-10	1:30 p.m.	1225 Ferry St. SE Mt. Mazama Conference Rm. Salem, OR

Hearing Officer: Brenda Brown

Stat. Auth.: ORS 279.850(1)(c)

Stats. Implemented: ORS 279.835, 279.840, 279.845, 279.850 & 279.855

Proposed Adoptions: 125-055-0016, 125-055-0017

Proposed Amendments: 125-055-0005, 125-055-0010, 125-055-0015, 125-055-0020, 125-055-0025, 125-055-0030, 125-055-0035, 125-055-0040, 125-055-0045

Last Date for Comment: 8-17-10, 5 p.m.

Summary: In 1977, the Oregon Legislature passed the “Products of Disabled Individuals” act or Qualified Rehabilitation Facility (QRF) law. The QRF law obliges all state and local governments, school districts and other tax supported political bodies in Oregon, to purchase goods and services from QRFs when the product or service meets their requirements. The Rules interpreting these statutes were revised in 2003. A QRF Advisory Council of diverse stakeholders was convened in the fall of 2007. This Advisory Council acted as the Administrative Rules Advisory Committee and met until early summer of 2009. During this period they reviewed the QRF rules for accountability and transparency. That Advisory Committee made rule revision recommendations to DAS.

Rules Coordinator: Yvonne Hanna

Address: Department of Administrative Services, 155 Cottage St. NE, Salem, OR 97301

Telephone: (503) 378-2349, ext. 325

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Department of Administrative Services, Oregon Educators Benefit Board Chapter 111

Rule Caption: Establishes the Oregon Educators Benefit Board policy for eligibility violations and policy term violations.

Date:	Time:	Location:
8-23-10	10 a.m.	PEBB/OEBB Boardroom 1225 Ferry St. SE Salem, OR 97301

Hearing Officer: OEBB Staff

Stat. Auth.: ORS 243.860–243.886

Stats. Implemented: ORS 243.864(a)

Proposed Adoptions: 111-080-0040, 111-080-0045, 111-080-0050

Last Date for Comment: 8-31-10, 5 p.m.

Summary: OARs 111-080-0040, 111-080-0045 and 111-080-0050 establish OEBB’s policy for eligibility violations and policy term violations which pertain to and affect OEBB members.

Rules Coordinator: April Kelly

Address: Department of Administrative Services, Oregon Educators Benefit Board, 1225 Ferry St. SE, Suite B, Salem, OR 97301

Telephone: (503) 378-6588

NOTICES OF PROPOSED RULEMAKING

Department of Administrative Services, Public Employees' Benefit Board Chapter 101

Rule Caption: Changes benefits rules responsive to Board action, and procurement/contracting rules per recent DOJ review.

Date: 9-9-10
Time: 3:30-4:30 p.m.
Location: PEBB/OEBB Boardroom
1225 Ferry St. SE, Suite B
Salem, OR 97301

Hearing Officer: Cherie M. Taylor

Stat. Auth.: ORS 243.125

Other Auth.: ORS 279.845(1)(c)

Stats. Implemented: ORS 183.310-183.550, 192.660, 243.061 - 243.302, 292.051 & 659A.060-659A.069

Proposed Adoptions: 101-020-0066

Proposed Amendments: 101-002-0005, 101-002-0010, 101-005-0010, 101-005-0020, 101-005-0030, 101-005-0040, 101-005-0050, 101-005-0070, 101-005-0090, 101-005-0105, 101-005-0110, 101-005-0120, 101-005-0130, 101-005-0140, 101-020-0015, 101-050-0005, 101-050-0010, 101-050-0015, 101-050-0020

Proposed Repeals: 101-001-0010, 101-002-0015, 101-002-0020, 101-005-0060, 101-006-0010, 101-006-0020, 101-050-0025

Last Date for Comment: 9-9-10, 5 p.m.

Summary: Adoptions, amendments and repeals contained herein are in response to: (1) improved, clarified or incorporated changes necessary due to Board action, taken at its June 15, 2010 Board meeting (Bdattach.2, "PEBB Oregon Administrative Rules"); and (2) DOJ-reviewed rule changes clarifying that DOJ Model Public Contract Rules may apply when PEBB's and DAS's procurement and contracting rules do not.

Rules Coordinator: Cherie M. Taylor

Address: Department of Administrative Services, Public Employees' Benefit Board, 1225 Ferry St. SE, Suite B, Salem, OR 97301

Telephone: (503) 378-6296

Department of Agriculture Chapter 603

Rule Caption: Amends brucellosis testing and importing requirements for cattle.

Date: 8-25-10
Time: 1 p.m.
Location: 635 Capitol St. NE
Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 596

Stats. Implemented: ORS 596.020 & 596.331

Proposed Amendments: 603-011-0270

Last Date for Comment: 8-30-10

Summary: The Oregon Department of Agriculture, Animal Health Division has the responsibility to protect the livestock of this state from disease. Brucellosis is a highly contagious disease spread by direct contact. The domestic livestock in the United States are currently considered free from brucellosis infection. These amendments will update and clarify the rule and bring it into alignment with national guidelines.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301

Telephone: (503) 986-4583

Rule Caption: Adopt NIST Handbooks and ASTM Specifications; Prohibit VTM ATC; Clarify Biodiesel Blending Additive.

Date: 8-24-10
Time: 10-11 a.m.
Location: ODA Bldg.
635 Capitol St. NE
Salem, OR 97301-2532

Hearing Officer: Staff

Stat. Auth.: ORS 618.031, 646.922, 646.925 & 646.957

Stats. Implemented: ORS 618.036, 618.051, 646.921, 646.922, 646.925 & HB 3693

Proposed Amendments: 603-027-0105, 603-027-0180, 603-027-0206, 603-027-0220, 603-027-0400, 603-027-0410, 603-027-0420, 603-027-0430, 603-027-0490, 603-027-0635, 603-027-0655, 603-027-0680, 603-027-0700

Last Date for Comment: 8-31-10

Summary: The proposed administrative rule amendments would: (1) adopt the 2010 Edition national Institute of Standards and technology (NIST) Handbook 44; (2) adopt the 2009 Edition NIST Handbook 130, Packaging and Labeling, Method of Sale of Commodities, and Examination Procedure for Price Verification model regulations; (3) prohibit use of automatic temperature compensation (ATC) on vehicle tank meter (VTM) systems; (4) adopt the 2010 Edition ASTM International specifications for motor fuels; (5) adopt minimum motor octane number for gasoline; (6) clarify analysis of in-state and imported biodiesel; (7) define analysis laboratory requirements; (8) allow additives to biodiesel blends 10/1-10 to 2/28/11; and (9) editorial amendments.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301

Telephone: (503) 986-4583

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

Rule Caption: Rule updates definition of "pattern of violation" used in enforcement penalty matrix.

Date: 8-17-10
Time: 10 a.m.
Location: 1535 Edgewater St. NW
Salem, OR 97304

Hearing Officer: James Hanson

Stat. Auth.: ORS 446.995 & 455.895

Stats. Implemented: ORS 446.995 & 455.895

Proposed Amendments: 918-001-0036

Last Date for Comment: 8-23-10, 5 p.m.

Summary: This rule updates the definition of a "pattern of violation" that is used by the different advisory boards of the State Building Codes Division in applying the civil penalty matrix for enforcement cases. The civil penalty imposed for a violation is increased to the maximum where there is a pattern of violation. The amended rule changes the definition of "pattern of violation" to a five year period for all violations.

Rules Coordinator: Dolores Wagner

Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309

Telephone: (503) 373-1258

Rule Caption: Adopting the 2010 Solar Installation Specialty Code, solar fee methodologies and plan review threshold.

Date: 8-17-10
Time: 9:30 a.m.
Location: 1535 Edgewater St. NW
Salem, OR 97304

Hearing Officer: Aeron Teverbaugh

Stat. Auth.: ORS 183.335, 455.020, 455.048, 455.055, 455.117, 455.496, 479.730 & 479.870

Stats. Implemented: ORS 183.335, 455.020, 455.046, 455.055, 455.117, 479.730 & 479.870

Proposed Adoptions: 918-800-0010, 918-800-0020, 918-800-0030, 918-800-0040, 918-050-0180, 918-305-0265

Proposed Amendments: 918-311-0040, 918-309-0070

Last Date for Comment: 8-20-10, 5 p.m.

Summary: These proposed rules are part of a comprehensive package to adopt Oregon's first Solar Installation Specialty Code (OSISC). The proposed rules adopt the 2010 OSISC in accordance with the administrative procedures in ORS 183. The proposed rules amend sections of the National Electrical Code (NEC) that relate to

NOTICES OF PROPOSED RULEMAKING

solar electrical installations. The proposed amendments to the NEC will become part of the Oregon Electrical Specialty Code (OESC).

The proposed rules also adopt a methodology to standardize the method used by jurisdictions to value structural permits for solar installations. The proposed rules include clarifications of electrical and structural fee methodology and plan review requirements for renewable energy permits. The proposed rules create a streamlined process for solar installations across the state, reducing costs for installers and encouraging renewable energy use in Oregon.

Rules Coordinator: Delores Wagner

Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309

Telephone: (503) 373-1258

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Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Clarifies that change in prior authorization requirements is modification and specifies notice requirements.

Date:	Time:	Location:
8-25-10	9:30 a.m.*	350 Winter St. NE Salem, OR

Hearing Officer: Jeannette Holman

Stat. Auth.: ORS 731.244, 743.566 & 743.773

Stats. Implemented: ORS 743.737, 743.754, 743.760 & 743.766

Proposed Amendments: 836-053-0001

Last Date for Comment: 9-1-10

Summary: *NOTE: The hearing will begin at 9:30 a.m. and end when all present who wish to testify have done so.

This rule amends OAR 836-053-0001 to clarify that a change in prior authorization requirements is a modification that requires notice to the policyholders. The rule also specifies the notice requirements that a prior authorization modification requires.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

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

Rule Caption: Proposed workers' compensation rules affecting the preferred worker program, vocational assistance, and electronic data interchange.

Date:	Time:	Location:
8-23-10	10 a.m.*	Labor & Industries Bldg., Rm. F (basement) 350 Winter Street NE, Salem, OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.726(4); 656.340(7) & (9) & 656.622(9)

Stats. Implemented: ORS 656, 656.264, 656.340 & 656.622

Proposed Adoptions: Rules in 436-162

Proposed Amendments: Rules in 436-110, 436-120, 436-160

Last Date for Comment: 8-26-10

Summary: *NOTE: The hearing will begin at 10:00 a.m. and end when all present who wish to testify have done so. Written testimony will be accepted through Aug. 26, 2010.

NOTE: "Insurer" in this summary includes self-insured employers.

The agency proposes to amend OAR chapter 436 to improve organization, clarity and consistency, and to eliminate redundancy. More specifically:

The agency proposes to amend OAR chapter 436, division 110, "Preferred Worker Program." These proposed rules address: Definitions of "date of eligibility" and "date of hire," clarifying eligibility for preferred worker program incentives; amendment of required

notices to employers; timeframes for employers to request premium exemption from their insurers.

The agency proposes to amend OAR chapter 436, division 120, "Vocational Assistance to Injured Workers." These proposed rules address: The definition of "authorized return to work plan"; amendment of required notices to workers as well as reorganization/clarification of notice requirements; reasons for ending vocational eligibility; criteria for reimbursement of training costs and payment of temporary disability if a worker begins training before eligibility determination; requirements for vocational counselors and interns to obtain training on the vocational assistance and reemployment assistance rules; eliminating the direct experience requirement for interns; standards of conduct for registered vocational assistance providers and certified individuals.

The agency proposes to amend OAR chapter 436, division 160, "Electronic Data Interchange; Medical Bill Data." These proposed rules address: Medical bill data reporting, including: time frames for moving from testing to production; time frames to submit corrected bill data; required (matching) data for cancel and replace transactions; accepted, disabling claim volume thresholds for insurers to become subject to reporting requirement or eligible for exemption from continued reporting; time frames to correct and resubmit rejected transactions; reporting of corrections when specific bill data changes; reporting of DRG codes; timeliness and accuracy expectations for medical bill data reporting and penalties for non-compliance. The agency also proposes to move rules related to electronic reporting of proof of coverage data from division 160 to a new division within chapter 436, division 162.

The agency proposes to adopt OAR chapter 436, division 162, "Electronic Data Interchange; Proof of Coverage." Most of the rule text has either been copied or moved from OAR 436-160, so requirements for proof of-coverage and medical data reporting will be in separate rule divisions. These proposed rules do not change any existing reporting requirement for proof of coverage.

Address questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7514; e-mail fred.h.bruyns@state.or.us. Proposed rules are available on the Workers' Compensation Division's website: <http://wcd.oregon.gov/policy/rules/rules.html#proprules> or telephone 503-947-7717 or fax 503-947-7514.

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: Volunteers and Student Interns for the Department of Corrections.

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

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

Proposed Amendments: 291-015-0100 – 291-015-0125, 291-015-0135

Proposed Repeals: 291-015-0130, 291-015-0140 – 291-015-0150

Last Date for Comment: 10-15-10

Summary: These rule modifications are necessary to update the organizational and structural changes within the department's volunteer program, and place the procedural detail in a department policy. The operational procedures are better placed in department policy rather than administrative rule because they direct the internal management of the program.

Rules Coordinator: Janet R. Worley

Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667

Telephone: (503) 945-0933

NOTICES OF PROPOSED RULEMAKING

Department of Energy Chapter 330

Rule Caption: Biomass Producer or Collector Tax Credit program rules.

Date: 8-23-10	Time: 9 a.m.	Location: State Library 250 Winter St. NE, Rm. 102-103 Salem, OR 97301
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Hearing Officer: Hillary Dobson

Stat. Auth.: ORS 315.141 & 469.790

Stats. Implemented: ORS 315.141 & 469.790

Proposed Adoptions: 330-170-0010, 330-070-0020, 330-070-0030, 330-070-0040, 330-070-0050, 330-070-0060, 330-070-0070

Proposed Repeals: 330-170-0010(T), 330-070-0020(T), 330-070-0030(T), 330-070-0040(T), 330-070-0050(T), 330-070-0060(T), 330-070-0070(T)

Last Date for Comment: 8-23-10, 5 p.m.

Summary: These rules are intended to implement the process and criteria for certifying biomass Producer or Collector Tax Credits and establishing the minimum discount value for transferred credits. The rules provide clear guidelines related to the application and qualification criteria. These rules implement legislation from the 2009 session that requires tax credits to be certified, allows the Department of Energy to establish additional criteria used to determine the amount of credit certified, allows the Department of Energy to establish a fee to cover the cost of certification, allows the Department of Energy to define criteria to determine additional characteristics of biomass, and allows the Department of Energy to determine a minimum discount value for the transfer of these tax credits.

Rules Coordinator: Kathy Stuttaford

Address: Department of Energy, 625 Marion St. NE, Salem, OR 97301

Telephone: (503) 373-2127

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Rule Caption: Modification of the Business Energy Tax Credit to implement caps and revise processing criteria.

Date: 9-14-10	Time: 9:30 a.m.	Location: Dept. of Energy 625 Marion St. NE Salem, OR 97301
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Hearing Officer: Hillary Dobson

Stat. Auth.: ORS 469.040, 169.165, 469.185–469.225, 315.356 & 2010 OL Ch. 76

Stats. Implemented: ORS 469.185–469.225, 315.354 & HB 3680 (2010)

Proposed Adoptions: 330-090-0350, 330-090-0450

Proposed Amendments: 330-090-0105, 330-090-0110, 330-090-0120, 330-090-0130, 330-090-0133, 330-090-0140, 330-090-0150

Proposed Repeals: 330-090-0105(T), 330-090-0110(T), 330-090-0120(T), 330-090-0130(T), 330-090-0133(T), 330-090-0140(T), 330-090-0150(T), 330-090-0350(T), 330-090-0450(T)

Last Date for Comment: 9-16-10, 5 p.m.

Summary: These rules implement the provisions of HB 3680 (2010) which went into effect on May 27, 2010. These rules:

- Implement the monetary cap for renewable energy facility pre-certification established in HB 3680.
- Create a system to prioritize renewable energy projects based on criteria and factors to consider.
 - Define renewable energy storage device.
 - Update eligible cost for wind powered devices above 10MW and electric vehicle manufacturing.
 - Create deadlines for applications prior to program sunsets revised in HB 3680.
 - Amend standards used when considering what constitutes a single facility, including phasing, expansions or additions to renewable energy manufacturing facilities.
 - Clarify when final certification may be issued for efficient truck technology.

- Add clarity to existing policies for applicants.
- Update calculations used for determining discounted value of tax credits transferred under ORS 469.206.

Rules Coordinator: Kathy Stuttaford

Address: Department of Energy, 625 Marion St. NE, Salem, OR 97301

Telephone: (503) 373-2127

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Rule Caption: Establishes criteria for agencies to compare fuel cell power systems to other equipment options.

Date: 8-24-10	Time: 9 a.m.	Location: Dept. of Energy 625 Marion St. NE Salem, OR 97301
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Hearing Officer: Kathy Stuttaford

Stat. Auth.: ORS 276.910

Stats. Implemented: ORS 276.910

Proposed Adoptions: 330-130-0500

Last Date for Comment: 8-26-10

Summary: The proposed rules establish criteria, for use by state agencies when constructing or renovating a major facility, to enable the comparison of fuel cell power systems to other equipment options for use in emergency backup and critical power equipment.

Rules Coordinator: Kathy Stuttaford

Address: Department of Energy, 625 Marion St. NE, Salem, OR 97301

Telephone: (503) 373-2127

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Department of Environmental Quality Chapter 340

Rule Caption: 401 Water Quality Certification Fee Increase.

Date: 8-30-10	Time: 6 p.m.	Location: Columbia Gorge Community College 400 East Scenic Dr. Bldg. 3, Classroom 3.203 The Dalles, OR 97058
9-1-10	6 p.m.	Roseburg Central Library 1409 NE Diamond Lake Blvd. Ford Community Rm. Roseburg, OR 97470
9-8-10	6 p.m.	DEQ Headquarters Office Conference Rm. EQC-A 811 SW Sixth Ave. Portland, OR 97204

Hearing Officer: DEQ staff

Stat. Auth.: ORS 468.020, 468.068 & 468B.047

Stats. Implemented: ORS 468B.047

Proposed Amendments: 340-048-0055

Last Date for Comment: 9-10-10, 5 p.m.

Summary: The Oregon Department of Environmental Quality (DEQ) is proposing to increase fees for certifying that activities requiring federal licenses and permits comply with water quality requirements and standards. DEQ certifies compliance as authorized by Section 401 of the federal Clean Water Act. The proposed fees apply to most removal, fill and other activities, except hydroelectric, requiring 401 certification

This rulemaking is intended to increase 401 certification fees so that revenue is sufficient for program costs and to provide additional staff to expedite review/approval and to enhance technical assistance/program implementation.

The proposed changes will apply to most persons or organizations that require federal permits or licenses for removal, fill or other activities (except hydroelectric projects) that may result in discharges to navigable waters of Oregon. This includes individuals, small and large businesses, local governments, state and federal agencies and other entities.

To request additional information regarding this rulemaking, please contact: Palmer Mason at the Department of Environmental

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Quality, call toll free in Oregon 800-452-4011 or 503-229-6800 or visit DEQ's public notices webpage <http://www.deq.state.or.us/regulations/proposedrules.htm>

To comment on this rulemaking, submit your comments to: Palmer Mason, Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204, or by fax to 503-229-6977, or by email to mason.palmer@deq.state.or.us

Rules Coordinator: Maggie Vandehey

Address: 811 SW Sixth Avenue, Portland OR 97204

Telephone: (503) 229-6878

Department of Fish and Wildlife

Chapter 635

Rule Caption: Authorize Department staff to represent the agency in certain wildlife related contested cases.

Date:	Time:	Location:
9-2-10	8 a.m.	873 NE 34th Ave. Hillsboro, OR 97124

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 183.452 & 496.138

Stats. Implemented: ORS 183.452 & 496.138

Proposed Adoptions: 635-001-0070

Last Date for Comment: 9-2-10

Summary: Subject to the approval of the Attorney General, an officer or employee of the Department, designated by the Director, is authorized to represent the Department in contested case hearings concerning suspension from the Landowner Preference Program or the Master Hunter Program, suspension of certification as a Hunter Education Instructor, or suspension or revocation of licenses or tags under the Wildlife Violator Compact.

Rules Coordinator: Therese Kucera

Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303

Telephone: (503) 947-6033

Rule Caption: Amend Bass and Walleye Fishing Tournament Rules to establish Grandfather Rights for Permit Applicants.

Date:	Time:	Location:
9-2-10	8 a.m.	Washington Co. Fair Complex Cloverleaf Bldg. 873 NE 34th Ave. Hillsboro, OR 97124

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146 & 498.118

Stats. Implemented: ORS 498.279 & 498.284

Proposed Adoptions: Rules in 635-001

Proposed Amendments: Rules in 635-001

Proposed Repeals: Rules in 635-001

Last Date for Comment: 9-2-10

Summary: Amend rules relating to Bass and Walleye fishing tournaments to establish "grandfather" rights for permit applicants who meet certain criteria and to establish a preference point system for applicants which are not successful in getting a permit.

Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Therese Kucera

Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303

Telephone: (503) 947-6033

Rule Caption: Amend Rules regarding furbearer record cards and harvest reporting.

Date:	Time:	Location:
9-2-10	8 a.m.	873 NE 34th Ave. Hillsboro, OR 97124

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Proposed Amendments: Rules in 635-050

Last Date for Comment: 9-2-10

Summary: These rules include the Bobcat and River Otter record card regulations. When the Bobcat bag limit was amended in another section of this rule, a particular section was not updated. These amendments update the available spaces on the bobcat record card to align with the bag limit already established. The amendments may also address issues relating to failure to submit mandatory harvest reports.

Rules Coordinator: Therese Kucera

Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303

Telephone: (503) 947-6033

Rule Caption: Amend Clackamas Subbasin Fish Management Rules to Update Status and Pursue Reintroduction of Bull Trout.

Date:	Time:	Location:
9-2-10	8 a.m.	Washington Co. Fair Complex Cloverleaf Bldg. 873 NE 34th Ave. Hillsboro, OR 97124

Hearing Officer: Fish & Wildlife Commission

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.172 & 506.109

Stats. Implemented: ORS 496.004, 496.009, 496.164, 496.171 & 496.182

Proposed Adoptions: Rules in 635-500

Proposed Amendments: Rules in 635-500

Proposed Repeals: Rules in 635-500

Last Date for Comment: Rules in 9-2-10

Summary: Amend rules relating to Clackamas Subbasin Fish Management, specifically the management of trout populations and proposed reintroduction of bull trout to this subbasin. The rule modifications clarify the status of bull trout in the Clackamas subbasin and direct staff to pursue the reintroduction of bull trout, to contribute to recovery of this species within the Willamette Recovery Unit, pursuant to the U.S. Fish and Wildlife Service Draft Bull trout recovery Plan.

Rules Coordinator: Therese Kucera

Address: Department of Fish and Wildlife, 3406 Cherry Ave. NE, Salem, OR 97303

Telephone: (503) 947-6033

Department of Human Services, Addictions and Mental Health Division: Mental Health Services Chapter 309

Rule Caption: Update the definitions and independent review process used for contesting significant procedures.

Date:	Time:	Location:
8-16-10	1 p.m.	500 Summer St. NE, Rm. 137A Salem, OR 97301

Hearing Officer: Richard Luthe

Stat. Auth.: ORS 179.040 & 409.050

Stats. Implemented: ORS 179.321, 426.070, 426.385, 427.031 & 427.255

Proposed Amendments: Rules in 309-114

Proposed Repeals: 309-114-0005(T), 309-114-0020(T)

Last Date for Comment: 8-19-10

Summary: Oregon State Hospital, through the Addictions & Mental Health Division, is permanently amending OAR 309-114-005 to update the definition of "Significant Procedures of a Similar Class" in order to list specific classes of medications to be considered as "Significant Procedures of a Similar Class."

Oregon State Hospital, through the Addictions & Mental Health Division, is permanent amending OAR 309-114-0020 to update the independent review process to state the procedures to be followed if a patient refuses to be examined.

Housekeeping changes are also being made.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Richard Luthé
Address: Department of Human Services, Addictions and Mental Health Division: Mental Health Services, 500 Summer St. NE, E-86, Salem, OR 97301
Telephone: (503) 947-1186

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**Department of Human Services,
Administrative Services Division and Director's Office
Chapter 407**

Rule Caption: Amendments to Clarify Policies and Procedures for Provider Audits, Appeals, and Post Payment Recovery.

Date:	Time:	Location:
8-23-10	1:30 p.m.	Human Services Bldg. Rm. 137-A 500 Summer St. NE Salem, OR 97301

Hearing Officer: Jennifer Bittel

Stat. Auth.: ORS 409.050, 411.060 & 413.032

Stats. Implemented: ORS 409.040, 409.180, 414.025 & 414.065

Proposed Ren. & Amends: 410-120-1505 to 407-120-1505

Last Date for Comment: 8-25-10, 5 p.m.

Summary: OAR 410-120-1505 is being renumbered to 407-120-1505 and amended to bring policies up to date and to align the administrative rules with the Department of Human Services' (Department) policy and practice. These proposed amendments are needed to clarify provider audits, appeals, and post payment recovery processes. The rule specifies timeframes for review and the comment period for the preliminary audit report; timeframes for appeal requests on decisions outlined in the final audit report, when a case is considered closed; and protocols for electronic record-keeping systems, overpayments, administrative reviews and contested case hearings. With the creation of Oregon Health Authority and federal health care reform, the rule changes are necessary to ensure clarity of the Department's Office of Payment Accuracy and Recovery's (OPAR) authority to perform federally required responsibilities, current policies and procedures, and provider compliance with audit requirements.

Proposed rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>

For hardcopy requests, call: (503) 947-5250.

Rules Coordinator: Jennifer Bittel

Address: 250 Winter St NE, Salem, OR 97301

Telephone: (503) 947-5250

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**Department of Human Services,
Children, Adults and Families Division:
Child Welfare Programs
Chapter 413**

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
8-24-10	1:30 p.m.	500 Summer St. NE, Rm. 254 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 417.200-417.260, 418.005 & 418.647

Stats. Implemented: ORS 417.200-417.260, 418.005 & 418.647

Proposed Amendments: 413-040-0240

Last Date for Comment: 8-26-10, 5 p.m.

Summary: OAR 413-040-0240 about which state is responsible for providing the financial support and medical coverage for a child when that child has been placed in another state under the Interstate Compact on the Placement of Children (ICPC) is being amended to state how the Department determines the amount of the foster care payment, if any, the child is to receive. This rule also is being amended to make permanent the temporary rule changes made effective March 15, 2010.

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

Written comments may be submitted until August 26, 2010 at 5:00 p.m. Written comments may be submitted via e-mail to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Children, Adults, and Families Division, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Children, Adults and Families Division: Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301-1066

Telephone: (503) 945-6067

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**Department of Human Services,
Children, Adults and Families Division:
Self-Sufficiency Programs
Chapter 461**

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Date:	Time:	Location:
8-24-10	10 a.m.	500 Summer St. NE, Rm. 254 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: 181.537, 409.010, 409.050, 409.610, 410.070, 411.060, 411.070, 411.081, 411.083, 411.085, 411.087, 411.095, 411.105, 411.111, 411.116, 411.117, 411.122, 411.135, 411.141, 411.400, 411.402, 411.404, 411.431, 411.598, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.704, 411.706, 411.708, 411.816, 411.825, 411.892, 412.001, 412.006, 412.009, 412.014, 412.124, 412.049, 414.025, 414.033, 414.065, 414.231, 414.428, 414.706, 414.707, 414.712, 414.826, 414.831, 414.839, 416.350, 420.014, 420.054, 657A.340, 657A.450 & 2010 OL Ch. 73

Other Auth.: 7 USC 2014; 42 USC 7; 42 USC 1315; 42 USC 1396p; 42 USC 1396p(a), (b) and (h); 42 CFR 430; 42 CFR 430.10; 42 CFR 433.36; 42 CFR 435; 42 CFR 435.406; 42 CFR 435.920, 42 CFR 435.948; 42 CFR 457; 42 CFR 457.310; 7 CFR 273.9(d)(6)(iii); 7 CFR 273.10; 20 CFR 416.2099; American Recovery and Reinvestment Act of 2009 (Pub. Law 111-5); The American Recovery and Reinvestment Act of 2009 (ARRA) (123 Stat. 309-312); Section 8120 of Department of Defense Appropriations Act, 2010 (123 Stat. 3409); Oregon Health Plan 2 Demonstration Project No. 21-W-00013/10 and 11-W-00160/10 available from Department of Human Services Division of Medical Assistance Programs, 500 Summer Street NE, Salem, OR 97301; Oregon Medicaid/State Children's Health Insurance Program (SCHIP) Health Insurance Flexibility and Accountability (HIFA) Section 1115 Demonstration; Oregon State Plan Under Title XIX of the Social Security Act Section 1917; Waiver to section 1915(c) Home and Community Based Services, Appendix B

Stats. Implemented: ORS 181.537, 409.010, 409.050, 409.610, 410.070, 411.060, 411.070, 411.081, 411.083, 411.085, 411.087, 411.095, 411.105, 411.111, 411.116, 411.117, 411.122, 411.135, 411.141, 411.400, 411.402, 411.404, 411.431, 411.598, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.704, 411.706, 411.708, 411.795, 411.816, 411.825, 411.892, 412.001, 412.006, 412.009, 412.014, 412.049, 414.025, 414.033, 414.065, 412.124, 414.231, 414.428, 414.706, 414.707, 414.712, 414.826, 414.831, 414.839, 416.310, 416.340, 416.350, 420.014, 420.054, 657A.340, 657A.450 & 2010 OL Ch. 73

Proposed Amendments: 461-110-0370, 461-110-0430, 461-115-0530, 461-115-0705, 461-135-0150, 461-135-0835, 461-135-0900, 461-135-1100, 461-135-1102, 461-135-1110, 461-135-1125, 461-140-0296, 461-145-0130, 461-145-0140, 461-145-0143, 461-145-0360, 461-145-0930, 461-150-0050, 461-155-0150, 461-155-0190, 461-155-0693, 461-160-0040, 461-160-0400, 461-160-0420, 461-160-0430, 461-160-0540, 461-160-0610, 461-160-0855, 461-165-

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0060, 461-165-0100, 461-165-0160, 461-165-0180, 461-165-0190, 461-170-0010, 461-170-0011, 461-175-0210, 461-175-0240, 461-175-0270, 461-175-0280, 461-175-0305, 461-180-0020, 461-180-0030, 461-180-0090, 461-180-0097, 461-180-0120, 461-190-0211, 461-193-0240, 461-193-1380

Proposed Repeals: 461-115-0530(T), 461-115-0705(T), 461-135-0150(T), 461-135-0835(T), 461-135-0900(T), 461-135-1102(T), 461-135-1110(T), 461-135-1125(T), 461-145-0130(T), 461-145-0140(T), 461-145-0143(T), 461-150-0030, 461-155-0693(T), 461-170-0100, 461-170-0110, 461-180-0090(T), 461-193-0240(T)

Last Date for Comment: 8-26-10, 5 p.m.

Summary: OAR 461-110-0370 about filing group (the individuals from the household group whose circumstances are considered in the eligibility determination process) composition in the Supplemental Nutrition Assistance Program is being amended to restate the monthly countable income standards.

OAR 461-110-0430 about which individuals make up a filing group (the individuals whose circumstances are considered in the eligibility determination process) in the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs is being amended to restate when a separate filing group may be formed within a household consisting of only newly arriving refugees.

OAR 461-115-0530 about OHP certification periods is being amended to include policy about the Healthy KidsConnect (HKC) program certification period and to clarify that HKC program subsidy amounts are not reduced or eliminated during an HKC program certification period. A certification period is the period for which a client is certified eligible for a program. This rule also is being amended to make permanent the temporary rule changes made effective July 1, 2010.

OAR 461-115-0705 about the verification requirements for the Department's medical programs is being amended to indicate the verification requirements for the Extended Medical Assistance (EXT) program. These amendments also state the verification requirements for social security numbers, alien status, and pregnancy in the Breast and Cervical Cancer Medical Program (BCCM), Healthy KidsConnect (HKC), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs. These amendments also state the income verification requirements for the HKC, MAA, MAF, OHP, and SAC programs. This rule is also being amended to specify the EXT, MAA, and MAF programs must verify the premium amount for cost-effective employer sponsored insurance. This rule also is being amended to make permanent the temporary rule changes made effective on May 28, 2010 and July 1, 2010.

OAR 461-135-0150 about the specific eligibility requirements in the Substitute and Adoptive Care (SAC) program is being amended in response to recent legislation (2010 Or. Laws ch. 73 (HB 3664)) to state the eligibility requirements for extending medical coverage for a child who had been in foster care immediately prior to reaching 18 years of age and who has not yet reached 21 years of age. This rule also is being amended to make permanent the temporary rule changes effective May 1, 2010.

OAR 461-135-0835 about the limits on claims against an estate the Department may make in the Breast and Cervical Cancer Medical (BCCM), General Assistance (GA), General Assistance Medical (GAM), Oregon Health Plan (OHP), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs is being amended to correct a drafting error made in an April 1, 2010 amendment to this rule. State law (ORS 411.708, 411.795, and 416.350) requires the Department to seek reimbursement for specific types of public assistance from the estate of a deceased individual who received public assistance. If the husband or wife of the recipient is still alive, the Department must wait until after the spouse dies and then seek reimbursement from the estate of the spouse of the recipient. The temporary rule deletes a mistaken reference to a

“recipient’s spouse” and replaces it with “recipient” to correct the rule and make it consistent with ORS 411.708, 411.795, and 416.350. This rule also is being amended to make the May 27, 2010 temporary changes to this rule permanent.

OAR 461-135-0900 about specific eligibility requirements in the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs is being amended in response to recent federal legislation — Department of Defense Appropriations Act, 2010 (Section 8120 of Pub. L. No. 111-118 (123 Stat. 3409)) — to remove the eight month limitation on the length of time that an Iraqi or Afghan alien who is a Refugee Case Services Project (RCSP) program client may receive New Arrival Employment Services (NAES) program services. The Department also is making these rule changes to make temporary rule changes made May 17, 2010 permanent.

OAR 461-135-1100 about the specific eligibility requirements for an individual to receive Oregon Health Plan (OHP) program benefits is being amended to state that coverage under the Kaiser Transition Program is not included in the definition of private major medical health insurance. This rule is also being amended to make permanent the temporary rule changes made April 21, 2010 and July 1, 2010.

OAR 461-135-1102 about when the Department classifies an applicant to the Oregon Health Plan - Adults (OHP-OPU) program to be a new applicant is being amended to restate the conditions under which the Department considers an individual not to be a new applicant for OHP-OPU program eligibility determinations.

OAR 461-135-1110 about when a student enrolled in higher education is eligible or ineligible for the Oregon Health Plan - Adults program (OHP-OPU, which provides coverage for adults who qualify under the 100 percent income standard) is being amended in response to a recent change in federal guidelines to revise the definition for the term “meets the requirements for a Pell grant”. This rule also is being amended to make permanent the temporary rule changes made effective July 1, 2010.

OAR 461-135-1125 about how the Department determines which individuals included on the Oregon Health Plan - Adults (OHP-OPU) program Standard Reservation List are selected to apply for the OHP-OPU program is being amended to restate the definition of an “OHP Standard Reservation List Applicant”. This rule also is being amended to make permanent the rule changes made temporarily effective on April 21, 2010.

OAR 461-140-0296 about the length of disqualification due to a disqualifying asset transfer (transfer of an asset for less than its fair market value to become eligible for program benefits) in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), and Oregon Supplemental Income Program Medical (OSIPM) programs is being amended to update the amount used to calculate the number of months of ineligibility due to a disqualifying transfer of assets. This amount is calculated by using the average monthly cost to a private patient of nursing facility services in Oregon. The rule also is being amended to state that for disqualifying transfers that occur on or after July 1, 2006, the date the disqualification begins regardless of whether the transfer of the asset is disclosed at application or is discovered after the client becomes a recipient of GA, GAM, OSIP, or OSIPM program benefits.

OAR 461-145-0130 about the treatment of earned income in the eligibility process is being amended to disregard the JOBS Plus earned income of TANF recipients when determining initial and ongoing eligibility for the Medical Assistance Assumed (MAA) and Refugee Medical (REFM) programs. This amendment allows JOBS Plus participants to continue to receive medical assistance as other TANF clients in accordance with ORS 411.892(9). This amendment makes permanent changes adopted by temporary rule on May 19, 2010.

OAR 461-145-0140 about how the Department treats tax credits received by a client when making eligibility and benefit level determinations is being amended to state an Earned Income Tax Credit is

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excluded from assets (income and resources). This rule also is being amended in response to recent federal legislation (The American Recovery and Reinvestment Act of 2009 (123 Stat. 309-312)) to state when the Department, while making eligibility and benefit level determinations for the client, excludes a Making Work Pay (MWP) tax credit received by a client from the client's assets and when a General Assistance (GA), General Assistance Medical (GAM), Healthy KidsConnect (HKC), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), or Qualified Medicare Beneficiaries (QMB) program client who has received an MWP tax credit qualifies for a \$33 earned income exclusion per month. This rule also is being amended to make the temporary rule changes made effective April 22, 2010 permanent.

OAR 461-145-0143 about economic recovery payments is being amended to remove its statements about the \$33 earned income exclusion because this topic is now covered in OAR 461-145-0140, and there is potential confusion when the topic is covered in two rules. This rule also is being amended to make the temporary rule changes made effective July 1, 2010 permanent.

OAR 461-145-0360 about how the Department treats the value of motor vehicles when determining a client's eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and benefit level is being amended for the Qualified Medicare Beneficiary (QMB) and Oregon Supplemental Income Program Medical (OSIPM) programs to restate how the Department treats the value of motor vehicles. This rule also is being amended to remove a provision of the rule for which no remaining Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM) program clients meet the criteria and to remove unnecessary references to the OSIP program.

OAR 461-145-0930 about how the Department treats self-employment income when determining a client's countable income is being amended to state how the Healthy KidsConnect (HKC) and Oregon Health Plan (OHP) programs treat self-employment income.

OAR 461-150-0030 about how the Department used retrospective eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and budgeting (the process of calculating the benefit level) in all programs except the Employment Related Day Care and Oregon Health Plan programs, OAR 461-170-0100 about when a filing group (the individuals from the household group whose circumstances are considered in the eligibility determination process) was subject to the requirements of the Monthly Reporting System (MRS), and OAR 461-170-0110 about when the Department considered a Monthly Change Report from a client complete are being repealed; and OAR 461-150-0050 about when the Department uses prospective eligibility and budgeting in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs, OAR 461-165-0100 about the date the Department issues (makes available) benefits to a client, OAR 461-170-0010 about the requirement that a client report changes in accordance with the reporting system to which the Department assigns the client, OAR 461-170-0011 about which changes in circumstances that a client must report and how the client must report the changes, OAR 461-175-0210 about the notice the Department sends to a client when a client has moved out of state or the client's whereabouts are unknown, OAR 461-175-0240 about the notice the Department sends to a client when a financial group (the individuals whose income and resources count in determining eligibility) receives lump-sum income that will make the financial group ineligible or cause a reduction in benefits, OAR 461-175-0270 about the notice the Department sends to a client when the Department reduces or closes benefits based on a client's changed circumstances, OAR 461-175-0280 about the notice the Department sends to a client when the Department reduces or closes benefits

because the client in the Simplified Reporting System (SRS) fails to return the Interim Change Report or a client in the Employment Related Day Care program fails to return a reapplication form, OAR 461-175-0305 about the notice the Department sends to a client when the Department removes an individual from a benefit group (the individuals who receive benefits) or a need group (the individuals whose basic and special needs are used in determining eligibility and benefit levels), OAR 461-180-0020 about how the Department determines the effective date for an increase in benefits resulting from a client's changed income or income deductions for all Department programs except the ERDC program, OAR 461-180-0030 about how the Department determines the effective date for a reduction in benefits resulting from a client's changed income or income deductions for all clients except for those assigned to SRS or Transitional Benefit Alternative (TBA), and OAR 461-180-0120 about how the Department determines the effective date for removing an individual from a benefit group are being amended to remove references to the Monthly Reporting System (MRS) and retrospective eligibility and budgeting as the Department no longer assigns clients to MRS and does not utilize retrospective eligibility or budgeting for any Department clients.

OAR 461-155-0150 about the eligibility standards, payment rates, and copayments that apply to child care benefits under the Employment Related Day Care (ERDC), Job Opportunity and Basic Skills (JOBS), JOBS Plus, and Temporary Assistance for Needy Families (TANF) programs is being amended to restate the maximum number of total payable child care hours in the ERDC and TANF programs; state that certain provisions of this rule apply only to ERDC, JOBS, JOBS Plus, and TANF program child care benefits; state the 2007 federal poverty level standards used to determine certain client copayment amounts in the ERDC program; and state the special circumstances allowing a client to have the Department make child care payments beyond the otherwise allowable monthly rate. This rule also is being amended to reorganize its provisions to improve the rule's understandability and application.

OAR 461-155-0190 about the countable and adjusted income and Thrifty Food Plan payment standards in the Supplemental Nutrition Assistance Program is being amended to restate these income and payment standards.

OAR 461-155-0693 about Transportation Services Payments in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to expand the allowed payments to include reimbursement of mileage for some non-commercial transportation. This rule also is being amended to make permanent the temporary rule changes effective July 1, 2010.

OAR 461-160-0040 about when the Department deducts dependent care costs from a client's income when making eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and benefit level determinations and when the Department may pay for child care for a client is being amended to state that in the Employment Related Day Care (ERDC), Refugee Assistance (REF), and Temporary Assistance for Needy Families (TANF) programs the Department may pay the cost of dependent child care when the child care is necessary for the working client to perform his or her job duties. This rule also is being amended to remove language stating certain provisions of this rule apply to the Extended Medical Assistance (EXT) program.

OAR 461-160-0400 about how the Department treats a financial group's (the individuals whose income and resources count in determining benefits) countable income (the non-excluded income used to determine eligibility) and adjusted income (countable income less income deductions) when determining the group's Supplemental Nutrition Assistance Program (SNAP) program eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) and benefit levels is being amended to restate which filing groups (the individuals whose circumstances are considered in the eligibility determination

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process) remain eligible for SNAP program benefits when the financial group's income is over the applicable income standard in compliance with federal law.

OAR 461-160-0420 about how to calculate a client's shelter cost in the Supplemental Nutrition Assistance Program is being amended to restate the amounts for the utility allowances, used to offset the utility costs clients incur. This rule also is being amended to restate when the unreimbursed costs of repairing a client's home substantially damaged by a natural disaster may be counted as a cost of housing.

OAR 461-160-0430 about deductions from countable income made to determine adjusted income for the Supplemental Nutrition Assistance Program is being amended to restate the deduction amounts.

OAR 461-160-0540 about how the Department determines financial eligibility (the decision as to whether an individual qualifies, under financial requirements, to receive program benefits) for Qualified Medicare Beneficiaries (QMB) and Oregon Supplemental Income Program Medical (OSIPM), except Oregon Supplemental Income Program Medical - Employed Persons with Disabilities (OSIPM-EPD), program clients who live in the community, do not receive Supplemental Security Income (SSI) benefits, and do not receive Title XIX waived services is being amended to state how the Department determines financial eligibility for non-waivered services clients.

OAR 461-160-0610 about the payment a client in the Oregon Supplemental Income Program Medical (OSIPM), except Oregon Supplemental Income Program Medical - Employed Persons with Disabilities (OSIPM-EPD) program who receives long-term care services must make to remain eligible for the program is being amended to state a client with developmental disabilities receiving services through a support services waiver under OAR 411-340-0100 and 411-340-0130 is not required to make a payment for the waived services and to bring the rule into compliance with the state waiver regarding non-compliance with 42 USC 1915(c).

OAR 461-160-0855 about how the Department treats Qualified Partnership Policy (a type of a long term care insurance policy) payments a client receives when determining countable resources for an applicant in the Oregon Supplemental Income Program Medical (OSIPM) program is being amended to state that these payments are not excluded from countable resources when the Qualified Partnership Policy was purchased in a state that did not elect to participate in reciprocity regarding these policies under Medicaid.

OAR 461-165-0060 about how the Department determines the minimum initial and ongoing month benefit levels in the Refugee Assistance (REF), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs is being amended to restate the minimum initial and ongoing SNAP program monthly benefit levels for the different types of SNAP program benefit groups (the individuals who receive benefits) in compliance with federal law.

OAR 461-165-0160 about how the Department makes payments to child care providers is being amended to state that in the Employment Related Day Care (ERDC) and Temporary Assistance for Needy Families (TANF) programs the Department may make a payment only to an eligible provider during a month for which child care is being provided to meet an unexpected need of the provider related to the care of the covered child.

OAR 461-165-0180 about how the Department determines if a child care provider is eligible to receive payments from the Department for child care provided on behalf of Department clients is being amended to require a child care provider and each subject individual connected to that provider to complete the Department's background check process and be approved by the Department for the provider to be eligible for payment or authorization for payment from the Department. This rule also is being amended to require a child care provider not required to be certified or registered with the Child Care Division (CCD) of the Employment Department to complete

the Department's background check process and be approved by the Department to be eligible for payment or authorization for payment from the Department. This rule also is being amended to state the Department must withhold authorization for payment to a provider until all the Department required background checks are complete. The rule also is being amended to state that a child care provider not subject to certification or registration with the Oregon Employment Department, Child Care Division (CCD) 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 the provider 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.

OAR 461-165-0190 about the circumstances under which the Department may make payments for child care directly to an Employment Related Day Care (ERDC), Job Opportunity and Basic Skills (JOBS), or Temporary Assistance for Needy Families (TANF) program client is being amended to allow the Department to make payments for child care directly to the client only for short term (up to 30 consecutive days) child care when the Department notifies the client that the client's approved child care provider is no longer eligible for a child care payment from the Department.

OAR 461-180-0090 about effective dates for the initial month of medical benefits is being amended to state that except for children who qualify for Oregon Supplemental Income Program Medical (OSIPM) long term care services, the effective date of medical eligibility for clients transitioning from the Healthy KidsConnect (HKC) program to the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), OSIPM or Medical Coverage for Children in Substitute or Adoptive Care (SAC) medical programs is the first of the month following the month an eligibility determination is made. This rule also is being amended to make permanent the temporary rule changes made effective July 1, 2010.

OAR 461-180-0097 about the effective date on which a premium payment for a client in the Oregon Health Plan - Adults (OHP-OPU) program starts or ends is being amended to state the effective date that an OHP-OPU program client is required to start paying the premium is the first of the month following the month the Department determines eligibility (the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits) for a new client and the first month of the new certification period for a client found eligible at a redetermination.

OAR 461-190-0211 about the payments the Department provides to clients for support services (child care, housing, transportation, and other needs) to help a client successfully comply with the activities in the client's case plan is being amended to state the Department may pay the cost of dependent child care when the child care is necessary for the working client to perform his or her job duties. The amended rule places additional limits on paying for child care for training and continuing education.

OAR 461-193-0240 about the clients exempt from participating in New Arrival Employment Services (NAES) program activities is being amended in response to recent federal legislation — Department of Defense Appropriations Act, 2010 (Section 8120 of Pub. L. No. 111-118 (123 Stat. 3409)) — to remove the eight month limitation on the length of time that an Iraqi or Afghan alien who is a Refugee Case Services Project (RCSP) program client and was granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act was eligible for the NAES program. The Department also is making these rule changes to make temporary rule changes made May 17, 2010 permanent.

OAR 461-193-1380 about the payments the Department provides to New Arrival Employment Services (NAES) program clients for support services (child care, housing, transportation, and other needs) to help a client successfully comply with the activities in the client's case plan is being amended to state the Department may pay the cost of dependent child care when the child care is necessary for the work-

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ing client to perform his or her job duties. The amended rule places additional limits on paying for child care for training and continuing education.

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

Written comments may be submitted until August 26, 2010 at 5:00 p.m. Written comments may be e-mailed to Annette.Tesch@state.or.us, faxed to 503-373-7032, or mailed to Annette Tesch, Rules Coordinator, DHS - Children, Adults, and Families Division, 500 Summer Street NE, E-48, Salem, Oregon, 97301. The Department provides the same consideration to written comment as it does to any oral or written testimony provided at the public hearing.

Rules Coordinator: Annette Tesch

Address: Department of Human Services, Children, Adults and Families Division: Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301

Telephone: (503) 945-6067

Department of Human Services, Division of Medical Assistance Programs Chapter 410

Rule Caption: Maternity Case Management, place of service restrictions removed.

Date:	Time:	Location:
8-18-10	10 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137B Salem, OR 97301

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-130-0595

Last Date for Comment: 8-20-10

Summary: The Medical-Surgical Services program administrative rules govern the Division's payment for services to certain clients. Rule 410-130-0595 was temporarily and retroactively amended on 4/15/2010. With this Notice, the Division will permanently and retroactively amend 410-130-0595 to repeal language that restricts the place of service for maternity case management visits to the home setting, unless extenuating circumstances are documented. Permanently removing this language retroactive to July 1, 2009 is necessary to assure payment for claims submitted since July 1, 2009 and ongoing and to ensure future access to maternity case management visits for clients in counties where such visits cannot be provided in a home setting.

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Division of Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301

Telephone: (503) 945-6927

Rule Caption: Pilot project for prenatal coverage for CAWEM women; Closing Lane Co. retroactive to 7/1/10.

Date:	Time:	Location:
8-18-10	10 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137C Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.040, 409.050 & 409.110

Stats. Implemented: 414.025 & 414.065

Proposed Amendments: 410-120-0030

Last Date for Comment: 8-20-10

Summary: The General rules program administrative rules govern the Division of Medical Assistance Programs (Division) payments for services provided to clients. The Division will amend 410-120-0030 to disallow the expansion of the pilot program to add Lane County as a participating County. The Division agreed to add Lane County as a participating County effective July 1, 2010, (contingent upon CMS approval) and processed the rule revision to reflect that authorization, however following the permanent rule filing, Lane

County informed the Division that they are not in a position to be an active participating provider and requested they not be added at this time. Therefore, the Division will amend this rule retroactive to July 1, 2010, to disallow the addition of Lane County.

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Division of Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301

Telephone: (503) 945-6927

Rule Caption: Oregon Health Plan Benefit Package of Covered Services.

Date:	Time:	Location:
8-18-10	10 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137B Salem, OR 97301

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-141-0480

Proposed Repeals: 410-141-0480(T)

Last Date for Comment: 8-20-10

Summary: The Oregon Health Plan Program administrative rules govern the Division's payments for services provided to certain clients. Having temporarily amended this rule retroactive to January 1, 2010, DMAP needs to permanently amend to reference Oregon Health Plan Benefit Package of Covered Services that reflects payments for services provided to clients to coincide with Office for Oregon health Policy and Research changes to the Oregon Health Services Commission's Prioritized List of Health Services (Prioritized List), effective January 1, 2010.

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Division of Medical Assistance Programs, 500 Summer St. NE, E-35, Salem, OR 97301

Telephone: (503) 945-6927

Department of Human Services, Public Health Division Chapter 333

Rule Caption: Clarifying school immunization rules, changes to Primary Review Summary, and pharmacist reporting to ALERT IIS.

Date:	Time:	Location:
8-24-10	8 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1C Portland, OR 97232

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 431.262, 433.004, 433.096, 433.273, 433.282 & 433.283, 689.645

Stats. Implemented: ORS 431.262, 433.001, 433.004, 433.006, 433.096, 433.235-433.284 & 689.645

Proposed Amendments: 333-049-0050, 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0070, 333-050-0080, 333-050-0090, 333-050-0095, 333-050-0110, 333-050-0120, 333-050-0130, 333-050-0140

Last Date for Comment: 8-24-10, 5 p.m.

Summary: The Department of Human Services, Public Health Division is proposing to permanently amend administrative rules in chapter 333, divisions 49 and 50 relating to the ALERT Immunization Information System and School Immunization Law.

Major changes proposed by these amendments include: requiring pharmacists to report immunizations given to the Oregon ALERT Immunization Information System; modifying the Primary Review Summary report that schools and children's facilities complete annually; adding clarification about exclusion from certain sites; and clarifying acceptable documentation of immunization dates for children's facilities, schools, colleges, and community colleges. Wording changes have been made and text has been moved to clarify these rules.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Brittany Sande
Address: Department of Human Services, Public Health Division,
800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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**Department of Human Services,
Seniors and People with Disabilities Division
Chapter 411**

Rule Caption: Memory Care Communities (formerly known as Alzheimer's Care Units).

Date:	Time:	Location:
8-23-10	3:30 p.m.	Human Services Bldg. 500 Summer St. NE Rms. 137AB Salem, OR 97301

Hearing Officer: Staff

Stat. Auth.: ORS 410.070 & 443.886

Stats. Implemented: ORS 443.886

Proposed Adoptions: 411-057-0100, 411-057-0110, 411-057-0120, 411-057-0130, 411-057-0140, 411-057-0150, 411-057-0160, 411-057-0170, 411-057-0180, 411-057-0190

Proposed Repeals: 411-057-0000, 411-057-0010, 411-057-0020, 411-057-0030, 411-057-0040, 411-057-0045, 411-057-0050, 411-057-0060

Last Date for Comment: 8-25-10, 5 p.m.

Summary: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is proposing to repeal OAR 411-057-0000 to 411-057-0060 and adopt OAR 411-057-0100 to 411-057-0190 relating to memory care communities (formerly known as Alzheimer's care units). SPD plans to implement these rules on October 1, 2010.

The proposed rules:

- Update language by changing the term "Alzheimer's care unit" to "memory care community";
- Encourage endorsed memory care communities to provide supports to individuals with dementia in a person directed manner, focusing on their daily routines, their preferences as well as needs as to how personal care is provided, and the activities that they engage in;
 - Require applicants to demonstrate their capacity to operate a memory care community;
 - Address the relinquishment of an endorsement and provide a process for when a memory care community wishes to relinquish their endorsement;
 - Clarify that non-endorsed memory care communities may not advertise or imply that they have an endorsement. Requires SPD to send notice to cease advertising;
 - Provide responsibilities of administration that requires specific training for Administrators, a memory care community disclosure statement, and policies and procedures specific to memory care communities;
 - Allow for emergency staffing situations when required trained staff are unavailable;
 - Enhance training requirements for staff when they are hired, yet allow for more flexibility for ongoing in-service training;
 - Include a section that outlines the minimal services that are to be provided to residents in a memory care community; and
 - Enhance the physical plant requirements for new or remodeled facilities to better ensure resident safety and quality of life.

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Seniors and People with Disabilities Division, 500 Summer St. NE, E-10, Salem, OR 97301

Telephone: (503) 945-6398

**Department of Justice
Chapter 137**

Rule Caption: Protected personal information, statutes implemented in federal parent locator services, and parentage test cost reimbursement.

Stat. Auth.: ORS 25.020, 25.265 & 180.345

Stats. Implemented: ORS 25.020, 25.265, 109.070, 180.380, 192.820-192.858 & 416.430

Proposed Amendments: 137-055-1160, 137-055-1320, 137-055-1360, 137-055-3020

Last Date for Comment: 8-31-10, 5 p.m.

Summary: OAR 137-055-1160 is being amended to remove a reference to ORS 25.020. The effect of this change is that a child's date of birth will no longer be considered protected personal information if an order for nondisclosure is made.

OAR 137-055-1320 is being amended to clarify that one of the statutes it implements is ORS 180.380 (disclosure of information to authorized persons).

OAR 137-055-1360 is being amended to clarify that one of the statutes it implements is ORS 180.380 (disclosure of information to authorized persons).

OAR 137-055-3020 is being amended to clarify instances in which the Child Support Program will not seek reimbursement of parentage test costs.

Rules Coordinator: Vicki Tungate

Address: 494 State Street, Suite 300 Salem, OR 97301

Telephone: (503) 986-6086

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

Rule Caption: Third Party Testing for Commercial Driver Licenses.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.072 & 807.080

Stats. Implemented: ORS 807.040, 807.070, 807.072, 807.080 & 807.100

Proposed Amendments: 735-060-0000, 735-060-0030, 735-060-0040, 735-060-0050, 735-060-0055, 735-060-0057, 735-060-0060, 735-060-0065, 735-060-0090, 735-060-0095, 735-060-0100, 735-060-0105, 735-060-0110, 735-060-0115, 735-060-0130

Last Date for Comment: 8-23-10

Summary: DMV is using the American Association of Motor Vehicle Administrators' Commercial Skills Testing Information Management System (CSTIMS), a web-based test scheduling and reporting system. CSTIMS provides DMV with an effective new approach to fraud risk mitigation and deterrence, program oversight and controls, and improved safety for commercial motor vehicles by keeping unqualified drivers from obtaining a CDL.

DMV needs to revise the Division 60 rules because CSTIMS eliminates paper logs for reporting testing activity. DMV will require all testers and examiners to report scheduled tests and completed test results, including test failures, to DMV. These proposed rule amendments also:

(1) Define and describe the responsibilities of a designated CDL Tester Representative and require a CDL Tester Representative to complete DMV administrative training, including training on the use of CSTIMS.;

(2) Adds penalties for CDL testers and CDL examiners who attempt or commit fraud in the testing process; and

(3) Require that the Oregon Department of Education provide DMV approved testing and appointment of one or more CDL Tester Representatives who must comply with the applicable requirements and receive the DMV administrative training.

Other proposed amendments are made for clarity.

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

Rules Coordinator: Lauri Kunze

NOTICES OF PROPOSED RULEMAKING

Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301
Telephone: (503) 986-3171

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Rule Caption: Standards for Issuance of a Driver License without a Photograph.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.110

Stats. Implemented: ORS 807.110

Proposed Amendments: 735-062-0120

Last Date for Comment: 8-23-10

Summary: DMV recently amended OAR 735-062-0016 regarding the requirements of the driver license photograph. One way that a person proves his or her identity is through submitting to the collection of biometric data. The facial recognition technology used by DMV requires that the photograph be full faced with removal of eye glasses, clothing or other similar material that cover or distort the person's eyes or any other part of the face. Oregon law authorizes DMV to issue a driver license without a photograph if a person's religious beliefs prevent the person from removing clothing or other similar material that cover the person's eyes or face in order to have his or her photograph taken. DMV proposes to amend OAR 735-062-0120 — Standards for Issuance of a Driver License without a Photograph — to allow the issuance of a driver license without a photograph under these circumstances.

Text of proposed and recently adopted ODOT rules can be found at website: <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, Rm. 29, Salem, OR 97301

Telephone: (503) 986-3171

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Rule Caption: Restoration of Driving Privileges for Habitual Offenders.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 809.660

Stats. Implemented: ORS 807.110, 807.160 & 807.400

Proposed Amendments: 735-070-0160

Last Date for Comment: 8-23-10

Summary: OAR 735-070-0160 establishes that a person whose driving privileges have been revoked for a minimum of five years as a habitual offender under ORS 809.600 may apply to DMV for restoration of driving privileges. DMV currently requires that a person revoked as a habitual offender must meet all requirements for an original driver license or instruction permit. One requirement is that the person pass all required tests, including a driving test and a knowledge test. Under the Driver License Compact, another state will not issue a driver license to a person whose driving privileges are revoked in Oregon. If a person no longer is a resident of Oregon, DMV will accept test scores from another state's licensing agency to meet this requirement for restoration of the person's revoked Oregon driving privileges. If all the requirements are satisfied, the person's Oregon driving record will show the person is eligible for driving privileges. But many states refuse to test a driver who is not eligible for driving privileges, so the person is unable to satisfy this requirement unless the person returns to Oregon. Also, even if another state does test the driver, it may be difficult or impossible to obtain documentation from the other state that the person has passed the tests. This creates a very time consuming and costly catch-22, both for the person and for DMV.

Therefore, DMV proposes to amend OAR 735-070-0160 to allow a person who resides out-of-state and who otherwise qualifies for restoration of revoked driving privileges to voluntarily surrender his or her Oregon driving privileges in lieu of taking the required tests in another state. DMV will note the surrender of all privileges on the person's Oregon driving record. If the person does not have any other suspension or revocation actions, the person's Oregon driving record, as reported to another state through the National Driver Register/Problem Driver Pointer System, will show the person as eligible to apply for driving privileges. To be issued a license in another state,

the person must meet the licensing requirements of that state. Pursuant to OAR 735-062-0135, should the person want to be licensed again in Oregon, he or she will be required to pass all of Oregon's tests.

Other changes are made for clarity.

Text of proposed and recently adopted ODOT rules can be found at website: <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, Rm. 29, Salem, OR 97301

Telephone: (503) 986-3171

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Department of Transportation, Highway Division Chapter 734

Rule Caption: Rest Areas.

Stat. Auth.: ORS 184.616, 184.619, 366.205 & 366.493

Stats. Implemented: ORS 164.805, 366.205, 366.493, 374.305, 377.030 & 810.030

Proposed Amendments: 734-030-0005 – 734-030-0020

Last Date for Comment: 8-23-10

Summary: Chapter 99, 2009 laws (HB 2234) allows the Oregon Transportation Commission to adopt rules governing health and safety in rest areas and scenic overlooks under the jurisdiction of the Department of Transportation and provides a penalty for violation of these rules. Temporary rules to update the existing rule language and incorporate the penalty for violation of the rest area rules were adopted effective April 28, 2010. These rule amendments adopt the language from the temporary rule.

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

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Highway Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

Telephone: (503) 986-3171

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Rule Caption: Outdoor advertising — Premises definition; Business Identification sign permit; Directional sign permit.

Stat. Auth.: ORS 184.616, 184.619 & 377.725

Stats. Implemented: ORS 377.725 & HB 2273 (2007)

Proposed Repeals: 734-059-0005, 734-060-0005, 734-060-0015 – 734-060-0050

Last Date for Comment: 8-23-10

Summary: • Term no longer used in outdoor advertising regulation, as of HB 2273 (2007). Need to repeal definition.

• BID is type of permit deleted in statute by HB 2273. Need to repeal permit criteria rule.

• Directional is type of permit deleted in statute by HB 2273. Need to repeal permit criteria rules.

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

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Highway Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

Telephone: (503) 986-3171

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Rule Caption: Aggregation of small relocation credits; Scenic Byway Incentive Program; Outdoor Advertising violation penalties.

Stat. Auth.: ORS 184.616, 184.619, 377.763, 377.759, 377.992 & SB 689 (2009)

Stats. Implemented: ORS 377.763, 377.759, 377.992 & SB 689 (2009)

Proposed Adoptions: 734-059-0220, 734-063-0010

Proposed Amendments: 734-059-0200

Last Date for Comment: 8-23-10

NOTICES OF PROPOSED RULEMAKING

Summary: • Describe process for credit owners to take advantage of new provision of ORS.

• Describe process and criteria for permit owners in Scenic Byway to take advantage of new provision of ORS.

• Matrix of penalties as required by SB 689 (2009).

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

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Highway Division, 355 Capitol St. NE, Rm. 29, Salem, OR 97301

Telephone: (503) 986-3171

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Land Conservation and Development Department
Chapter 660

Rule Caption: Proposal to Amend the Willamette River Greenway Plan boundary within the City of Portland.

Date: 9-2-10 **Time:** 9 a.m. **Location:** 635 Capitol St. NE,
Basement Hearing Rm.
Salem, OR 97301

Hearing Officer: LCDC

Stat. Auth.: ORS 197.040, 390.318 & 390.322

Other Auth.: OAR 660-020-0065

Stats. Implemented: ORS 390.310-390.368

Proposed Amendments: 660-020-0060

Last Date for Comment: 9-2-10

Summary: The proposed amendment would change the Willamette River Greenway Plan boundary along that portion of the river within the city limits of Portland.

Rules Coordinator: Casaria Tuttle

Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301

Telephone: (503) 373-0050, ext. 322

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Rule Caption: Uses authorized on land designated as urban or rural reserves in the Portland Metro region.

Date: 9-2-10 **Time:** 9 a.m. **Location:** 635 Capitol St. NE,
Basement Hearing Rm.
Salem, OR 97301

Hearing Officer: LCDC

Stat. Auth.: ORS 197.040 & 195.145

Other Auth.: Statewide Planning Goals 3, 4, 5, 12 & 14 (OAR 660-015)

Stats. Implemented: ORS 195.137-195.145 & 2007 OL Ch. 723

Proposed Amendments: 660-027-0010, 660-027-0040, 660-027-0070

Last Date for Comment: 9-2-10

Summary: The proposed amendments would modify rules under OAR 660, division 27, that currently prohibit counties and Metro from amending the current designations of urban or rural reserves, and from amending the counties' comprehensive plans to allow new uses that were not allowed at the time of the reserves designations. The proposed rule amendments may expand the limited exceptions to these prohibitions to allow:

(1) certain additional types of transportation facilities that are normally only allowed in urban areas; (2) other comprehensive plan amendments to allow new uses, including amendments that require an exception to a statewide planning goal; (3) plan amendments to allow new uses that are authorized by future judicial decisions, statutory changes, or rule changes. In addition, the proposed rules would amend OAR 660-027-0040 to clarify that the rule addresses future changes to the Metro urban growth boundary and to the Metro and county reserve designations, rather than other plan amendments.

Rules Coordinator: Casaria Tuttle

Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301

Telephone: (503) 373-0050, ext. 322

Rule Caption: Adopt permanent rules to provide camping opportunities as temporary workforce housing related to construction projects.

Date: 9-2-10 **Time:** 9 a.m. **Location:** 635 Capitol St. NE,
Basement Hearing Rm.
Salem, OR 97301

Hearing Officer: LCDC

Stat. Auth.: ORS 197.040

Other Auth.: Statewide Planning Goals 2 & 3

Stats. Implemented: ORS 215.213(2) & 215.283(2)

Proposed Amendments: 660-033-0020, 660-033-0120, 660-033-0130

Proposed Repeals: 660-033-0130(T)

Last Date for Comment: 9-2-10

Summary: The proposed rules amend OAR Chapter 660, Division 33 to permanently authorize counties to allow temporary workforce housing for large-scale construction projects, subject to conditions.

Rules Coordinator: Casaria Tuttle

Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301

Telephone: (503) 373-0050, ext. 322

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Office for Oregon Health Policy and Research
Chapter 409

Rule Caption: Amendments to Oregon Prescription Drug Program Rules for Definitions and Contracted Services.

Stat. Auth.: ORS 414.312 & 414.320

Stats. Implemented: ORS 414.312, 414.314, 414.316 & 414.318

Proposed Repeals: 409-030-0065(T)

Proposed Ren. & Amends: 409-030-0000 to 943-030-0000, 409-030-0005 to 943-030-0005, 409-030-0010 to 943-030-0010, 409-030-0020 to 943-030-0020, 409-030-0030 to 943-030-0030, 409-030-0050 to 943-030-0050, 409-030-0065 to 943-030-0065

Last Date for Comment: 8-22-10, 5 p.m.

Summary: The Oregon Prescription Drug Program (OPDP) is proposing to amend OAR 409-030-000 to 409-030-0065 to expand the definition of "prescription drugs" to conform with practice and allow OPDP to rely on ORS 279A.065(4) which allows contracting agencies that have not adopted their own rules of procedure to be subject to the model rules adopted by the Attorney General, including all modifications. Adoption of these proposed rules also repeals the temporary rule, OAR 409-030-0065 that has been in effect since April 21, 2010. In addition, the OPDP rules are being renumbered and moved from Chapter 409 (Office for Oregon Health Policy and Research) to Chapter 943 (Oregon Health Authority) to align and update references consistent with agency reorganization.

Proposed rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>

For hardcopy requests, call: (503) 947-5250.

Rules Coordinator: Kym Gasper

Address: 500 Summer St NE, Salem, OR 97301

Telephone: (503) 945-6302

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Office of Private Health Partnerships
Chapter 442

Rule Caption: Adopt administrative rules for the Healthy KidsConnect program.

Date: 8-12-10 **Time:** 9 a.m. **Location:** 525 Trade St. SE,
Salem, OR 97301

Hearing Officer: Wanda Davis

Stat. Auth.: ORS 414.826

Stats. Implemented: ORS 414.826

Proposed Adoptions: 442-010-0010, 442-010-0020, 442-010-0030, 442-010-0040, 442-010-0050, 442-010-0060, 442-010-0070, 442-010-0080, 442-010-0090, 442-010-0100, 442-010-0110, 442-

NOTICES OF PROPOSED RULEMAKING

010-0120, 442-010-0130, 442-010-0140, 442-010-0150, 442-010-0160, 442-010-0170, 442-010-0180, 442-010-0190

Last Date for Comment: 8-16-10

Summary: The Office of Private Health Partnerships is establishing administrative rules for the Healthy KidsConnect program. Rules include: Purpose and Statutory Authority, Definitions, Carrier and Plant Selections, Member Eligibility, Premium Rates Premium Assistance Level, Enrollment in Healthy KidsConnect (HKC), Member Billing, Member Payments, Carrier Payments, Member Refunds, Enrollment in Healthy KidsConnect Employer Sponsored Insurance (HKC ESI), Vendor Set-up/State Accounting System. Employer Verification (HK ESI), Subsidy Payment (ESI), Cobra/Portability, Adding Family Members, Member Reporting, HKC or HK ESI Plan Termination. These rules, 442-010-0010 through 442-010-0190, apply to all Healthy KidsConnect and Healthy Kids Employer Sponsored Insurance plans issued on or after February 1, 2010.

Rules Coordinator: Margaret Moran

Address: Office of Private Health Partnerships, 250 Church St. SE, Suite 200, Salem, OR 97301

Telephone: (503) 378-5664

Oregon Criminal Justice Commission Chapter 213

Rule Caption: Amends Oregon Sentencing Guidelines in light of HB 3508 (2009).

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 & HB 3508 (2009)

Proposed Amendments: 213-017-0006

Proposed Repeals: 213-017-0006(T)

Last Date for Comment: 8-31-10

Summary: The Criminal Justice Commission (CJC) is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. The Oregon Legislature passed SB 1087 on February 22, 2008. The legislature referred SB 1087 to a vote of the people at the general election of November 4, 2008 through Ballot Measure 57. Ballot Measure 57 was passed by a majority of the voters at the general election. Section 10 of SB 1087 (2008 Oregon Laws chapter 14) changed the crime of Mail Theft or Receipt of Stolen Mail under ORS 164.162 from a Class A misdemeanor to a Class C felony. The Oregon Legislature voted to suspend implementation of portions of Measure 57 in HB 3508 (2009). Following HB 3508 (2009), Mail Theft or Receipt of Stolen Mail under ORS 164.162 is classified as a felony for sentences imposed prior to February 15, 2010 and for sentences imposed for crimes committed on or after January 1, 2012. During the intervening time period, that portion of Measure 57 that classified Mail Theft or Receipt of Stolen Mail under ORS 164.162 as a felony is suspended and that crime becomes a Class A misdemeanor. CJC amended the sentencing guidelines to incorporate that change. The amendment contained a typographical error, in which the date "January 1, 2010" was referenced instead of the date "January 1, 2012." A temporary rule is in place correcting that error. This rule amendment makes permanent that temporary change.

Rules Coordinator: Craig Prins

Address: Oregon Criminal Justice Commission, 885 Summer St. NE, Salem, OR 97301

Telephone: (503) 378-4830

Oregon Department of Education Chapter 581

Rule Caption: Specifies implementation date for new school sports pre-participation examination form.

Date:	Time:	Location:
8-25-10	1 p.m.	255 Capitol St. NE, Rm. 251 Salem, OR

Hearing Officer: Cindy Hunt

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.479

Proposed Amendments: 581-021-0041

Last Date for Comment: 8-25-10, 5 p.m.

Summary: The proposed amendments specify the implementation date for the new pre-participation examination form. These amendments were formerly adopted as a temporary rule.

Rules Coordinator: Diane Roth

Address: 255 Capitol St. NE, Salem, OR 97310

Telephone: (503) 947-5791

Rule Caption: Updates and clarifies rules relating to private career school licenses.

Date:	Time:	Location:
8-25-10	1 p.m.	255 Capitol St. NE, Rm. 251 Salem, OR

Hearing Officer: Cindy Hunt

Stat. Auth.: ORS 345.020

Stats. Implemented: ORS 345.010–345.450

Proposed Amendments: 581-045-0009, 581-045-0014, 581-045-0018, 581-045-0019, 581-045-0032, 581-045-0062

Last Date for Comment: 8-25-10, 5 p.m.

Summary: The rule amendments would do the following:

581-045-0009 Instructional Programs – Provides clarity regarding the components and level of detail required for those components for instructional programs in private career schools.

581-045-0014 Exceptions for Schools with Programs also Regulated by Another State Agency – Clarifies intent of this rule by using more specific language; to provide a cross-reference to exceptions granted in another rule to facilitate more accurate updates to the rules in the future.

581-045-0018 Record Keeping and 581-045-0019 School Catalogs – Brings rule requirements into closer alignment with the requirements of accrediting bodies and other federal programs and to provide clarity to the components and level of detail required in student records and school catalogs.

581-045-0032 Standards for Financial Reporting – Updates financial thresholds for specific report types, to adjust language to reflect current industry practice, and clarifies reporting requirements and allow for alternative forms of financial reports

581-045-0062 Application for Private Career School License Renewal – Updates the rule regarding the information required for renewal of a license; to clarify consequences for failure to submit an adequate and timely application; to fix a statutory conflict in the rule.

Rules Coordinator: Diane Roth

Address: 255 Capitol St. NE Salem, OR 97310

Telephone: (503) 947-5791

Oregon Health Licensing Agency, Environmental Health Registration Board Chapter 338

Rule Caption: Increase fees to stabilize board revenue.

Date:	Time:	Location:
8-31-10	9 a.m.	Rhoades Conference Rm. 700 Summer St. NE, Suite 320 Salem, OR 97301-1287

Hearing Officer: Bert Krages

Stat. Auth.: ORS 676.615

Stats. Implemented: ORS 676.610, 676.607 & 700.080

Proposed Amendments: 338-005-0020, 338-005-0030, 338-010-0030, 338-020-0030, 338-020-0050, 338-030-0020

Last Date for Comment: 8-31-10

Summary: The Oregon Health Licensing Agency and Environmental Health Registration Board (EHRB) are proposing to amend the EHRB fee schedule in an effort to stabilize the EHRB revenue streams through the end of the 2013-2015 biennium. The stabilization plan provides a significant increase to fees for applications, initial and renewal registrations as well as shifting from a two-year to a one-year cycle.

NOTICES OF PROPOSED RULEMAKING

Change agency name to Oregon Health Licensing Agency to be in compliance with statutory requirements under ORS 676.

Rules Coordinator: Samantha Patnode

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

Telephone: (503) 373-1917

Oregon Liquor Control Commission
Chapter 845

Rule Caption: Amendments implementing statute which now allows issuing full on-premises sales licenses to for-profit private clubs.

Date:	Time:	Location:
8-24-10	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Jennifer Huntsman

Stat. Auth.: ORS 471, 471.001, 471.030, 471.040, 471.175 & 471.730(1) & (5)

Stats. Implemented: ORS 471.001 & 471.175

Proposed Adoptions: 845-005-0322, 845-006-0495

Proposed Amendments: 845-005-0321, 845-006-0460, 845-006-0461, 845-006-0490

Last Date for Comment: 9-7-10

Summary: The 2010 special session of the legislature passed Senate Bill (SB) 1039 with an emergency clause, effective June 2, 2010. Senate Bill 1039 amended ORS 471.001 & ORS 471.175 allowing the Commission to issue a full on-premises sales license to a for-profit private club. Staff is proposing this package of rule amendments in order to implement the statutory changes. This rule package includes two new rules for adoption: OAR 845-005-0322, which will describe the licensing criteria for a for-profit private club; and OAR 845-006-0495, which will describe the compliance requirements for a for-profit private club. Additionally, staff proposes amendment of the current food service rule for Full Commercial (F-COM) licensees (OAR 845-006-0460) in order to make the rule language parallel to the new statutory definition of "commercial establishment" in ORS 471.001. Staff also proposes amending three existing private club rules in order to clarify that these private club rules apply to nonprofit private clubs, to bring rule language into alignment with the new statutory definition of "nonprofit private club" in ORS 471.175, and to lower the minimum membership requirement to match that proposed for for-profit private clubs.

Rules Coordinator: Jennifer Huntsman

Address: Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222

Telephone: (503) 872-5004

Rule Caption: Housekeeping updates to streamline and clarify public records and miscellaneous fees.

Stat. Auth.: ORS 471, 471.030, 471.730(1) & (5)

Stats. Implemented: ORS 192.440

Proposed Amendments: 845-004-0020

Last Date for Comment: 8-31-10

Summary: This rule outlines the various fees charged to the public, licensees, and the alcohol industry for certain services, including fulfilling records requests. Staff proposes to amend this rule to bring the language up to date with the Commission's current practices regarding providing various license and compliance records. For example, the current language outlines various lists available for a fee which are now available on-line. While in rulemaking, staff also proposes to take the opportunity to streamline and add clarifying language regarding public records request fees in general. There are no proposed changes to existing records request fulfillment processes or fee amounts other than updating the hourly rate for staff time to reflect inflation since its last amendment in 2001 and the addition of a nominal fee for sending records via fax.

Rules Coordinator: Jennifer Huntsman

Address: Oregon Liquor Control Commission, 9079 SE McLoughlin Blvd., Portland, OR 97222

Telephone: (503) 872-5004

Oregon State Lottery
Chapter 177

Rule Caption: Authorizes Video LotterySM prizes over \$600; multiple owners of cash slips; housekeeping changes.

Date:	Time:	Location:
8-23-10	2:30-3 p.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR

Hearing Officer: Larry Trott

Stat. Auth.: ORS 461

Other Auth.: OR Const. Art. XV Sec. 4(4)

Stats. Implemented: ORS 461.215, 461.220 & 461.250

Proposed Adoptions: 177-200-0077

Proposed Amendments: 177-040-0050, 177-040-0051, 177-046-0110, 177-200-0005, 177-200-0010, 177-200-0011, 177-200-0012, 177-200-0015, 177-200-0020, 177-200-0032, 177-200-0050, 177-200-0060, 177-200-0065, 177-200-0070, 177-200-0075, 177-200-0080, 177-200-0090

Last Date for Comment: 8-23-10, 3 p.m.

Summary: The Oregon Lottery adopted temporary rules to authorize the testing of Specialty Games, which are Video LotterySM games that offer some "Jackpot" prizes greater than \$600. The Lottery has now initiated rulemaking to adopt permanent rules authorizing Video LotterySM Specialty Games.

Other amendments include authorizing joint ownership of cash slips, clarifying a cash slip is a bearer instrument, and housekeeping changes for clarity and consistency.

Rules Coordinator: Mark W. Hohl

Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301

Telephone: (503) 540-1417

Oregon University System,
Oregon Institute of Technology
Chapter 578

Rule Caption: To amend the Schedule of Fees of Special Institution Fees and Charges.

Date:	Time:	Location:
8-23-10	2 p.m.	Snell Hall, Rm. 215 Oregon Institute of Technology Klamath Falls, OR

Hearing Officer: Mary Ann Zemke

Stat. Auth.: ORS 51

Stats. Implemented: ORS 351.070

Proposed Amendments: 578-041-0030

Last Date for Comment: 8-23-10

Summary: 578-041-0030 Amends the Schedule of Special Institution Fees and Charges. Amendments allow for increases, revision, additions or deletions of special course fees and general fees for fiscal year 2010-2011. The schedule of subject fees may be obtained from the Oregon Institute of Technology Office.

Rules Coordinator: Leticia Hill

Address: Oregon University System, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97601-8801

Telephone: (541) 885-1133

Oregon Watershed Enhancement Board
Chapter 695

Rule Caption: Revisions to land acquisition grant rules related to due diligence requirements and funds recoverable limits.

Date:	Time:	Location:
8-23-10	1 p.m.	State Lands Bldg., Rm. 201 775 Summer St. NE Salem, OR

NOTICES OF PROPOSED RULEMAKING

Hearing Officer: Melissa Leoni
Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9) & 541.376
Proposed Amendments: 695-045-0120, 695-045-0140, 695-045-0150
Last Date for Comment: 8-23-10, 5 p.m.

Summary: OWEB is proposing specific rule amendments related to the administration of the land acquisition grant program. OWEB is proposing updates to the rule describing the due diligence application requirements, including the donation disclosure (695-045-0120(2)(b) & (c)), fair market value appraisal (695-045-0120(2)(d)), preliminary title report (695-045-0120(2)(e)), and environmental site assessment (695-045-0120(2)(f)) requirements. OWEB is also proposing revisions to the land acquisition rules describing the amount of funds recoverable by OWEB for property misuse or unapproved conveyance (695-045-0140(4)(b) and 695-045-0150(4)). Public comment will be accepted on the proposed rules from August 2, 2010 through 5:00 PM on Monday, August 23, 2010. Copies of the proposed amendments will be available by August 2, 2010, on OWEB's web site (www.oregon.gov/OWEB/admin_rules_statutes.shtml).

Rules Coordinator: Melissa Leoni
Address: 775 Summer Street NE #360, Salem, Oregon 97301
Telephone: (503) 986-0179

Oregon Youth Authority
Chapter 416

Rule Caption: The rules will govern general media relations for the Oregon Youth Authority.

Date:	Time:	Location:
9-1-10	2-3 p.m.	Oregon Youth Authority Owyhee Conference Rm. 530 Center St. NE, Suite 200 Salem, OR 97301

Hearing Officer: Winifred Skinner
Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.010
Proposed Adoptions: 416-060-0005, 416-060-0010, 416-060-0015, 416-060-0020, 416-060-0025, 416-060-0030, 416-060-0035, 416-060-0040
Proposed Repeals: 416-150-0030
Last Date for Comment: 9-1-10, 5 p.m.
Summary: These rules will govern general media relations for the Oregon Youth Authority (OYA) including responding to information requests and granting access by Media Representatives to OYA facilities, programs, staff and offenders.
Rules Coordinator: Winifred Skinner
Address: 530 Center Street NE, Suite 200, Salem, OR 97301-3765
Telephone: (503) 373-7570

Parks and Recreation Department
Chapter 736

Rule Caption: Rules governing Cultural, Historic, Natural and Wildlife Resources are being amended to allow continued hunting practices at Cottonwood Canyon State Park.

Date:	Time:	Location:
8-16-10	10 a.m.	725 Summer St. NE, Rm. 124B Salem, OR

Hearing Officer: Jim Morgan
Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.111, 498.002 & 498.006
Proposed Amendments: 736-010-0055
Last Date for Comment: 8-31-10

Summary: The General Park Area Rules are being amended to allow continued hunting on OPRD-acquired property known as Cottonwood canyon State Park, in accordance with past practices allowed by previous land owner until such time as the Cottonwood Canyon State Park Master Plan can be developed and adopted.

Rules Coordinator: Vanessa DeMoe

Address: Parks and Recreation Department, 725 Summer St. NE, Suite C, Salem, OR 97301
Telephone: (503) 986-0719

Public Utility Commission
Chapter 860

Rule Caption: In the Matter of a Rulemaking to Update OAR 860-032-0620.

Stat. Auth.: ORS 183, 192, 756 & 759
Stats. Implemented: ORS 756.040, 759.015 & 759.425
Proposed Amendments: 860-032-0620
Last Date for Comment: 8-23-10, Close of Business

Summary: This rulemaking proposes changes necessary to implement a new, online filing and payment system for the reporting and payment of the Oregon Universal Service surcharge by subject companies. The proposed changes to the rule impact due dates for filing reports and submitting payments, create a new de minimis provision for contributions owing that are less than ten dollars, and provide guidelines for reimbursing a company that has overpaid.

The Commission encourages participants to file written comments as early as practicable in the proceeding so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference "AR 543" on comments and file them by e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us and also send a signed hard copy to the Filing Center at PO Box 2148, Salem, Oregon 97308-2418. For more information about the Commission's Filing Center, please see <http://apps.puc.state.or.us/edockets/center.htm>. Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16317>

Rules Coordinator: Diane Davis
Address: PO Box 2148, Salem, OR 97308
Telephone: (503) 378-4372

Secretary of State,
Archives Division
Chapter 166

Rule Caption: Updates records retention periods for compliance with the Code of Federal Regulations and Oregon OSHA.

Date:	Time:	Location:
8-23-10	9 a.m.	Oregon State Archives 800 Summer St. NE Salem, OR 97310

Hearing Officer: Staff
Stat. Auth.: ORS 98, 192 & 357
Other Auth.: CFR Title 29, Ch. 27, Part 1910
Stats. Implemented: ORS 192 & 357
Proposed Amendments: Rules in 166-150, 166-200, 166-300, 166-400, 166-450, 166-475

Last Date for Comment: 8-23-10, 5 p.m.
Summary: Proposed amendments will update the retention period for records documenting hazard exposure found in OAR 166 divisions 150, 200, 350, 400, 450 and 475 to be in compliance with the standards set by Title 29 of the Code of Federal Regulations. Additionally, an amendment to OAR 166-300 will update the retention for safety committee records established by Oregon OSHA.

Rules Coordinator: Julie Yamaka
Address: 800 Summer Street NE, Salem, OR 97310
Telephone: (503) 378-5199

Rule Caption: Amends rule to require the uniform retention of all state agency account transfer records.

Date:	Time:	Location:
9-2-10	10 a.m.	State Archives Bldg. 800 Summer St. NE Salem, OR 97310

Hearing Officer: Staff
Stat. Auth.: ORS 192 & 357

NOTICES OF PROPOSED RULEMAKING

Stats. Implemented: ORS 192 & 357

Proposed Amendments: 166-300-0025

Last Date for Comment: 9-2-10, 5 p.m.

Summary: Amends rule to require the uniform retention of all state agency account transfer records. Amendment eliminates the 75 year retention of records documenting transfers between statutory funds, and requires a uniform 6 year retention of all state agency account transfer records, documenting the authorized transfer, movement and receipt of funds between accounting structures.

Rules Coordinator: Julie Yamaka

Address: 800 Summer St. NE., Salem, OR 97310

Telephone: (503) 378-5199

**Secretary of State,
Corporation Division
Chapter 160**

Rule Caption: Official notary seal and embosser requirements for vendor.

Stat. Auth.: ORS 194.031

Stats. Implemented: ORS 194.005 & 194.031

Proposed Amendments: 160-100-0100, 160-100-0110, 160-100-0120

Proposed Repeals: 160-100-0100(T), 160-100-0110(T), 160-100-0120(T)

Last Date for Comment: 8-21-10

Summary: These rules clarify the requirements for the official notary seal and embosser for vendors. It specifically indicates how the required elements are to appear on the seal and embosser, and how a partial seal shall be imprinted on a notarial certificate attachment and document.

Rules Coordinator: Karen Hutchinson

Address: Secretary of State, Corporation Division, 255 Capitol St. NE, Suite 151, Salem, OR 97310

Telephone: (503) 986-2364

ADMINISTRATIVE RULES

Board of Examiners of Licensed Dietitians Chapter 834

Rule Caption: License-fee Reduction.

Adm. Order No.: BELD 1-2010

Filed with Sec. of State: 6-23-2010

Certified to be Effective: 6-23-10

Notice Publication Date: 2-1-2010

Rules Amended: 834-010-0050

Subject: The former rule required proration of the license fee twice during a biennium. That was unjust for an applicant applying shortly before a proration point. The amended rule, by specifying monthly proration, relieves the applicant of paying so much for so little.

Rules Coordinator: Doug Van Fleet—(971) 673-0190

834-010-0050

Fees

In accordance with the provisions of ORS 691.565, the following fees, where applicable, are payable to the Board/Health Division by check or money order:

(1) Application fee shall be \$50, nonrefundable.

(2) Initial license fee shall be \$6.25 per month or fraction thereof remaining through the next October of odd-numbered year.

(3) Renewal fee shall follow the same fee structure as the initial license fee.

(4) Delinquent fee shall be \$25.

Stat. Auth.: ORS 691.405 - 691.535

Stats. Implemented:

Hist.: LDB 1-1990(Temp), f. 8-23-90, cert. ef. 9-4-90; LDB 2-1990, f. & cert. ef. 12-20-90; LDB 1-1992, f. & cert. ef. 3-13-92; LDB 2-1993, f. 11-30-93, cert. ef. 12-1-93; BELD 1-2010, f. & cert. ef. 6-23-10

Board of Licensed Social Workers Chapter 877

Rule Caption: Repeal of impairment program rules and relates updates to code of ethics and complaint management.

Adm. Order No.: BLSW 2-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Adopted: 877-040-0018

Rules Amended: 877-030-0040, 877-040-0000, 877-040-0003, 877-040-0010

Rules Suspended: 877-035-0000, 877-035-0010, 877-035-0012, 877-035-0013, 877-035-0015

Subject: Implements House Bill 2345 by repealing all rules governing the Impaired Professionals Program of the Board (Division 35). Consolidates conduct reporting requirements, including those related to impairment, in one section of the ethics code. This includes addition of the statutory text relating to reporting requirements contained in ORS 675.583 (House Bill 2059) to the Board's Code of Ethics. Repeals previous definition of impairment and adopts in rule impairment definitions mandated by OR 676.185. Updates consumer protection committee rules to address impairment-related investigations, including adoption of a procedure for investigation of alleged impairment.

Rules Coordinator: Martin Pittioni—(503) 373-1163

877-030-0040

Conduct and Reporting Requirements of Regulated Social Workers

(1) Conduct: The following minimum standards of professional conduct apply to regulated social workers:

(a) Private conduct of regulated social workers is a personal matter to the same extent as with any other person, except when that conduct compromises the fulfillment of professional responsibilities.

(b) Regulated social workers may not participate in, condone, or be associated with dishonesty, fraud, deceit, or misrepresentation.

(c) Regulated social workers may not misrepresent their professional qualifications, education, experience, or affiliations.

(2) Reporting Requirements:

(a) Regulated social workers must report the following to the Board as soon as practicable, but not later than 10 days after:

(A) Being convicted of a misdemeanor or felony;

(B) Being arrested for a felony crime;

(C) Receiving notice of a civil lawsuit that names the regulated social worker as a defendant and makes allegations related to the regulated social worker's practice of clinical social work or the regulated social worker's license or certificate;

(D) Becoming an in-patient in a psychiatric hospital or psychiatric day treatment facility; or

(E) Receiving notice of a regulatory action related to the regulated social worker's license or certificate.

(b) Regulated social workers must report child and elderly abuse as required by ORS 419B.005 to 419B.050 and 124.050 to 124.095.

(c) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a regulated social worker is required to report to the board any information the regulated social worker has that appears to show that a regulated social worker is or may be an impaired professional or may have engaged in unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580. A regulated social worker is an impaired professional if the regulated social worker is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability or by reason of a mental health disorder.

(d) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a regulated social worker licensee who has reasonable cause to believe that a licensee has engaged in prohibited or unprofessional conduct is required to report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting regulated social worker must report the conduct without undue delay, but in no event later than 10 working days after the reporting regulated social worker learns of the conduct. In this section:

(i) "Licensee" means a health professional licensed or certified by or registered with a board.

(ii) "Board" has the meaning given that term in ORS 676.150.

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

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

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

(iv) "Unprofessional conduct" means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee's profession or conduct that endangers the health, safety or welfare of a patient or client.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.595

Hist.: BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

877-035-0000

Establishment of Program for Impaired Clinical Social Workers

(1) The board is required by ORS 675.600(1)(c) to: "Establish a program for impaired clinical social workers to assist licensed clinical social workers to regain or retain their certification or licensure and impose the requirement of participation as a condition to reissuance or retention of the certificate or license;" The board's program is described in this division of rules.

(2) *Impaired clinical social worker* is defined in ORS 675.510(4) as "a person unable to perform the practice of clinical social work by reason of mental illness, physical illness or alcohol or other drug abuse."

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.510 - 675.600 & 675.900

Hist.: BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; Suspended by BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

877-035-0010

Identification and Rehabilitation

(1) A Licensed Clinical Social Worker or Clinical Social Work Associate knowing of a Licensed Clinical Social Worker or a Clinical Social Work Associate whose behavior or practice fails to meet professional standards for the level at which the social worker is certified or licensed, must report the social worker to the person in the work setting who has authority to institute corrective action. In the event that the Licensed Clinical Social Worker has no direct supervisor, this report must be made to the Board of Clinical Social Workers.

(2) Any Licensed Clinical Social Worker or Clinical Social Work Associate who has knowledge or concern that the Licensed Clinical Social Worker or Clinical Social Work Associate's behavior or practice presents potential for or actual danger to the public health, safety, and welfare, must

ADMINISTRATIVE RULES

report or cause a report to be made to the Board of Clinical Social Workers. Failure of any Licensed Clinical Social Worker or Clinical Social Work Associate to comply with this reporting requirement may in itself constitute a violation of clinical social work standards.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990

Stats. Implemented: ORS 675.583

Hist.: BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; Suspended by BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

877-035-0012

Confidentiality of Information Supplied to the Board

The records and proceedings compiled by the board in regard to an impaired clinical social worker, including the record of treatment received by the clinical social worker, are confidential and shall not be disclosed to the public as required by ORS 676.175 and other applicable law; provided, however, all such information may be disclosed when the disclosure is made consistently with 676.175, 676.177, and other applicable law.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.510 - 675.600 & 675.900

Hist.: BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; Suspended by BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

877-035-0013

Criteria which Disqualify People from Program

Criteria which disqualify Licensed Clinical Social Workers or Clinical Social Work Associates from involvement in the Impaired Professional Program are:

- (1) Criminal history involving injury/endorsement;
- (2) Sale or manufacture of illegal substances;
- (3) Sexual offenders;
- (4) Three previous disciplines from the board.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.510 - 675.600 & 675.900

Hist.: BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; Suspended by BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

877-035-0015

Procedure for Evaluation of Possible Impairment

(1) On its own motion or upon complaint by any person the board may require a person licensed or certificated under ORS 675.510 et seq. to undergo evaluation to determine if the person is an impaired clinical social worker.

(2) In order to determine whether a clinical social worker is impaired, the board may require the person:

- (a) To cooperate with an evaluation ordered by the board.
- (b) To enter a rehabilitation program or ongoing monitoring recognized by the board.
- (c) To sign a release allowing the board to fully communicate with the rehabilitation program regarding the clinical social worker's progress or lack thereof.
- (d) To complete a rehabilitation program or participate in monitoring required by the board.

(3) The evaluation referred to in section (1) of this rule will be performed by a drug and evaluation center or professional of the board's choosing. The evaluator shall have access to all material regarding the clinical social worker in the board's files and will have additional authority to contact all persons who have previously communicated to the board regarding the alleged impaired status of the Clinical Social Work Associate or Licensed Clinical Social Worker.

Stat. Auth.: ORS 675.510 - 675.600 & 675.900

Stats. Implemented: ORS 675.510 - 675.600 & 675.900

Hist.: BCSW 1-1990, f. & cert. ef. 4-20-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-30-06; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; Suspended by BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

877-040-0000

Management of Complaints

(1) The board intends to provide fair, expeditious response to complaints.

(2) A board member who is unable to render an impartial, objective decision regarding a complaint must abstain from participating in the preparation, hearing, deliberation and disposition of the complaint. An abstention is effective at the time a board member announces a decision not to participate.

(3) A board member who is a complainant or respondent in a complaint is disqualified from participating in the preparation, hearing, deliberation and disposition of the complaint.

(4) The board may initiate a complaint.

(5) The Consumer Protection Committee oversees investigations of complaints received by the board. The committee may conduct investigations, prepare reports, require evaluations, and negotiate proposed agreements and may perform other duties prescribed by the board. In carrying out these duties, the committee may assign to the board's staff the duties of conducting investigations and preparing reports. Subject to the approval of the committee, the board Administrator may assist in negotiating a proposed agreement with a respondent.

(6) If the complainant is a client or former client of the respondent, the complainant must sign a waiver of confidentiality granting the board and its counsel access to records and other materials that are the ethical and legal responsibility of the respondent. Refusal by a complainant to comply with this requirement may result in the dismissal of the complaint.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990

Stats. Implemented: ORS 675.595(2)

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

877-040-0003

Definitions

The following definitions apply in this division of rules:

(1) "Complainant" – A person or group of persons who files a complaint or the Board for Board-initiated complaints.

(2) "Complaint" – A mandatory report or an allegation that a person regulated by the board has committed an act that would subject the person to discipline under ORS 675.540, or is impaired. A complaint should specifically describe the conduct complained of to the best of the ability of the complainant

(3) "Consumer Protection Committee" – A committee of one or more board members assigned by the board to fulfill specified functions related to complaints. There may be more than one Consumer Protection Committee.

(4) "Impairment" – an inability to practice with reasonable competence and safety due to the habitual or excessive use of drugs or alcohol, other chemical dependency or a mental health condition.

(5) "Respondent" – A person regulated by the board against whom a complaint is filed.

(6) "Social work" in ORS 675.540(1)(c) and (1)(d) means "clinical social work" as defined in ORS 675.510(2).

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990

Stats. Implemented: ORS 675.595

Hist.: BCSW 1-1986, f. & ef. 7-7-86; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

877-040-0010

Form of Complaints

Any person may file a complaint alleging a violation of ORS 675.510 to 675.600 or of the rules of the board, or impairment.

Stat. Auth.: ORS 675.510 - 675.600, 675.900 & 675.990

Stats. Implemented: ORS 675.595(1)

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 1-2009, f. 6-15-09, cert. ef. 7-1-09; BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

877-040-0018

Procedure for Investigation of Alleged Impairment

(1) On its own motion or upon complaint by any person the board may require a regulated social worker to undergo evaluation to determine if the person has an impairment.

(2) In order to determine whether a regulated social worker has an impairment, the board may require the person:

- (a) To cooperate with an evaluation ordered by the board.
- (b) To sign a release allowing the board to fully communicate with any treatment program or evaluator to obtain any evaluation respondent has undergone prior to or during the investigation by the board of the alleged impairment.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.540, 675.583, 676.160 & 676.185

Hist.: BLSW 2-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

Board of Nursing
Chapter 851

Rule Caption: Rules for Board of Nursing under the "Health Professionals' Services Program" as required by HB 2345 (Enrolled 2009 Session).

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Adm. Order No.: BN 6-2010(Temp)

Filed with Sec. of State: 6-23-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Adopted: 851-070-0000, 851-070-0005, 851-070-0010, 851-070-0020, 851-070-0030, 851-070-0040, 851-070-0050, 851-070-0060, 851-070-0070, 851-070-0080, 851-070-0090, 851-070-0100

Rules Suspended: 851-046-0000, 851-046-0005, 851-046-0010, 851-046-0020, 851-046-0030, 851-046-0040

Subject: These rules cover the newly established “Health Professionals’ Services Program (HPSP) and are specific to the Oregon State Board of Nursing. This program is being established by the Addictions & Mental Health (AMH) Division of the Department of Human Services as required by House Bill 2345 (Enrolled, 2009 Session). The Nurse Monitoring Program (OAR 851-046) is being eliminated. These rules will have a permanent rule hearing on September 16, 2010.

Rules Coordinator: KC Cotton—(971) 673-0638

851-046-0000

Statement of Purpose and Intent

(1) The Oregon Board of Nursing recognizes that alcoholism and drug addiction are primary, progressive, chronic diseases.

(2) The Board recognizes that problems resulting from the diseases of substance dependence or abuse, psychiatric or physical disorders may impair the nurse’s ability to safely practice nursing.

(3) The Board believes that nurses who develop these diseases can, with appropriate treatment, be assisted with recovery and return to the practice of nursing.

(4) It is the intent of the Board that nurses who have the diseases of substance dependence/abuse and psychiatric or physical disorders be given the opportunity to seek treatment and return to or continue the practice of nursing in a manner which benefits the public health, safety and welfare, as well as benefits the nurse’s recovery.

(5) It is the intent of the Board to fully cooperate with employers of these nurses in order to facilitate the nurse’s return to nursing practice. It is also the intent of the Board to closely monitor the nurse’s ability to practice safely.

(6) It is the intent of the Board that any nurse with no disciplinary action taken by the Board shall have the opportunity to enter the Nurse Monitoring Program regardless of the number of treatment programs the nurse has attended.

(7) Any nurse with three or less disciplinary actions for substance dependence/abuse in Oregon or in any state is eligible for the Nurse Monitoring Program provided the nurse has not been previously enrolled in the program and discharged for non-compliance.

(8) It is the intent of the Board that all information related to treatment for substance dependence/abuse, psychiatric, or physical disorders and monitoring of these nurses be kept confidential. The Board may disclose general information regarding the nurse’s participation in treatment and in the Nurse Monitoring Program only to those in the employment setting who are in a position of direct or general supervision of the nurse and need to know to ensure adequate monitoring, with the consent of the nurse. Information regarding the nurse’s participation in treatment and in the Nurse Monitoring Program may be disclosed only with the nurse’s written consent. The Board expects the employer to protect the confidentiality of information supplied by the Board regarding participants in the Nurse Monitoring Program.

(9) The Board of Nursing supports a voluntary Nurse Monitoring Program for nurses who would otherwise be charged with violating the Nurse Practice Act due to substance dependence/abuse, psychiatric or physical disorders.

(10) It is the intent of the Board that any nurse with the disease of substance dependence/abuse, a psychiatric disorder or a physical disorder may have the opportunity to enter the voluntary Nurse Monitoring Program. The nurse will not have the opportunity to enter into the Nurse Monitoring Program if the nurse’s circumstances disqualify him or her as outlined in OAR 851-046-0005.

(11) The Nurse Monitoring Program is an alternative to formal disciplinary action against the nurse’s license but is not a treatment program. The purpose of the Nurse Monitoring Program is to monitor the nurse’s compliance with treatment and ability to safely practice nursing. Investigation for possible disciplinary action will be initiated when the

nurse fails to comply with the requirements of the Nurse Monitoring Program.

(12) Participation in the Nurse Monitoring Program does not shield the participant from formal disciplinary action not related to the participant’s substance dependence/abuse, psychiatric disorder or physical disorder.

Stat. Auth.: ORS 678.112

Stats. Implemented: ORS 678.112

Hist.: NB 3-1991, f. & cert. ef. 9-25-91; NB 10-1993, f. & cert. ef. 10-15-93; NB 2-1997, f. & cert. ef. 1-2-97; NB 2-1997, f. & cert. ef. 1-2-97; BN 11-2001, f. & cert. ef. 7-24-01; Suspended by BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-046-0005

Criteria which Disqualify Nurses from Admission to or Continuation in the Nurse Monitoring Program

(1) Persons with criminal histories which involve injury or endangerment to others.

(2) Persons diagnosed as requiring treatment because of sexual offenses/misconduct.

(3) Persons previously enrolled in the Nurse Monitoring Program and referred to the Board for disciplinary action, including voluntary surrender of their nursing license due to noncompliance with the Nurse Monitoring Program. However, a person may be re-admitted for a condition other than the condition for which the person had previously been enrolled in the Nurse Monitoring Program.

Stat. Auth.: ORS 678.112

Stats. Implemented: ORS 678.112

Hist.: NB 10-1993, f. & cert. ef. 10-15-93; NB 2-1997, f. & cert. ef. 1-2-97; BN 11-2001, f. & cert. ef. 7-24-01; Suspended by BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-046-0010

Definitions

For the purpose of the rules in division 46, the following definitions apply:

(1) “Abstinence” means the avoidance of alcohol, mind-altering, or potentially addictive drugs.

(2) “Approved Treatment Program” means an organized program that meets the Board’s standards, in an inpatient, outpatient, or residential setting whose primary function is the evaluation and treatment of clients with substance dependence/abuse, psychiatric or physical disorders. The treatment program shall meet the following criteria:

(a) Employ staff qualified by education and experience to treat the client’s disorder;

(b) Have a formalized plan of care which includes:

(A) Assessment and diagnosis;

(B) Treatment goals including establishing and evaluating treatment outcomes;

(C) Discharge criteria;

(D) Guidelines for continuing recovery; and

(c) Provide a written report addressing all parts of the plan of care.

(3) “Body Fluid Testing” means the collection of blood, urine, or by other means utilized for the purpose of evaluating the presence of prescription or non-prescription drugs and alcohol. The collection and testing shall be performed by a preapproved laboratory, in a manner which preserves the integrity of the specimen.

(4) “Confidentiality of Records” means that no information pertaining to the nurse’s participation in the monitoring program is subject to discovery, subpoena, or public disclosure.

(5) Confidentiality of records may be waived by a written release signed by the nurse on a Board of Nursing approved form. The signed release must specify what information and to whom the information will be disclosed. Treatment records shall not be redisclosed.

(6) “Contract” means an individualized written agreement between the nurse and the Nurse Monitoring Program. The contract shall include the criteria for entrance and the terms and conditions for successful completion of the Nurse Monitoring Program.

(7) “Intake Evaluation” means an assessment of the nurse’s disorder by a qualified health care professional for the purpose of treatment recommendations and referral.

(8) “Nurse Monitoring Program” means a program administered by the Board which allows nurses with substance dependence/abuse, psychiatric or physical disorders to voluntarily seek treatment and participate in monitored practice without formal disciplinary action by the Board for such substance dependence/abuse, psychiatric or physical disorder.

(9) “Qualified Health Care Professional” means an individual who has specialized education/training to diagnose and treat the condition for which the nurse is seeking an assessment.

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(10) "Relapse" means the use of alcohol, mind-altering, or potentially addictive drugs for non-therapeutic reasons after sobriety has been demonstrated.

(11) "Relapse behavior" means a series of events that point towards a potential return to inappropriate use of substances. Examples include, but are not limited to, failure to follow the terms and conditions of the Nurse Monitoring Program contract; mood swings, unpredictability or changes in behavior in the employment setting; decreased participation in recovery activities; and avoiding contact with treatment personnel or the Nurse Monitoring Program coordinator.

(12) "Substance" means alcohol and other depressants, cannabis, cocaine and other stimulants, opiates, hallucinogens, inhalants and abuseable gases, and over-the-counter drugs with a potential for abuse.

(13) "Substance abuse" means a pattern of substance use leading to clinically significant impairment or distress as manifested by one or more of the following within a 12-month period:

(a) Recurrent substance use resulting in failure to fulfill obligations at work, school or home.

(b) Recurrent substance use when such use is physically hazardous;

(c) Recurrent substance-related legal problems; or

(d) Continued substance use despite recurrent consequences socially or interpersonally. Substance abuse, if left untreated, may progress to substance dependence.

(14) "Substance dependence" means a pattern of substance use leading to clinically significant impairment or distress as manifested by three or more of the following, occurring at any time in the same 12-month period:

(a) Increased tolerance to the substance;

(b) Withdrawal symptoms when not using the substance;

(c) Increased use of the substance;

(d) Unsuccessful efforts to decrease or eliminate use;

(e) Increased time spent either obtaining the substance or recovering from its' effects;

(f) Decreased social, occupational or recreational activities because of substance use; or

(g) Continued use of substances despite evidence of physical or psychological harm or consequences.

(15) "Substance Dependence/Abuse Specialist" means a health care professional who has specialized education in the evaluation and treatment of substance dependence/abuse and other addictive disorders. They may include, but are not limited to:

(a) Certified alcohol and drug counselor;

(b) Nurse Practitioner;

(c) Physician;

(d) Psychologist.

(16) "Support Group" means an organized meeting of individuals with similar disorders for the purpose of encouraging wellness and continued recovery.

(17) "Voluntary Participation" means that the nurse requests admission to the Nurse Monitoring Program or agrees to enter the Nurse Monitoring Program upon identification of a substance abuse, substance dependence, psychiatric, or physical disorder.

Stat. Auth.: ORS 678.112

Stats. Implemented: ORS 678.112

Hist.: NB 3-1991, f. & cert. ef. 9-25-91; NB 2-1997, f. & cert. ef. 1-2-97; BN 11-2001, f. & cert. ef. 7-24-01; Suspended by BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-046-0020

Criteria for Admission and Completion of the Nurse Monitoring Program for Nurses with Substance Dependence and/or Substance Abuse

(1) A registered nurse or licensed practical nurse may seek admission to the Nurse Monitoring Program in one of the following ways:

(a) By self-referral or admission to the addiction to alcohol or prescription drugs, the diversion and use of unauthorized drugs, or the abuse of other potentially addicting substances;

(b) By identification of substance dependence/abuse in conjunction with a complaint filed against the licensee;

(c) By referral from a family member, friend, nurse peer, or employer.

(2) Upon identification of a problem of substance dependence/abuse, and the nurse's admission to the same, the nurse shall:

(a) Obtain an intake evaluation from a substance dependence/abuse specialist;

(b) Enter an approved treatment program specific for substance dependence/abuse.

(3) The nurse shall enter into a contract with the Nurse Monitoring Program which shall include, but is not limited to:

(a) Successful completion of an approved treatment program and continuing care or approved alternative for a period of one year;

(b) Continued abstinence from mind-altering or potentially addictive drugs, including both over-the-counter and prescription drugs;

(c) The Board may require an additional evaluation from a substance dependence/abuse specialist or other qualified health care professional if the nurse continues to use prescription drugs from a valid prescription to determine whether the prescribed drug is the treatment of choice for the nurse's condition, for a relapse, or if there is evidence of relapse behavior.

(d) Random body fluid testing. The Board may require that urine collection be witnessed;

(e) Attendance at support groups, e.g., 12-Step groups and nurse support groups;

(f) Notification of all his/her health care providers of the nature of the nurse's addiction;

(g) Agreement to cease nursing practice if necessary, and not return to practice until the Nurse Monitoring Program, in consultation with the substance dependence/abuse specialist, determines that the nurse is able to safely return to practice;

(h) Notification to the current employers and to a school of nursing, if applicable, of participation in the Nurse Monitoring Program and of any practice restrictions in the nurse's contract with the Nurse Monitoring Program;

(i) Disclosure to a prospective employer of participation in the Nurse Monitoring Program once a job offer has been made or to a school of nursing upon acceptance into the program;

(j) Notification to the Nurse Monitoring Program if the nurse is hospitalized or must undergo any surgical procedure;

(k) Notification to the Nurse Monitoring Program of relapse, use of prescribed drugs or use of over-the-counter drugs that may affect recovery (within 24 hours);

(l) Regular contact with the Nurse Monitoring Program;

(m) A signed release of information with treatment and aftercare providers or counselors so the Nurse Monitoring Program may receive and provide information;

(n) Notification to the Nurse Monitoring Program if the nurse applies for endorsement to any state;

(o) Notification to all states of current licensure of participation in the Nurse Monitoring Program;

(p) Disclosure of participation in the Nurse Monitoring Program when the nurse applies for licensure in any other state either by endorsement or renewal.

(q) Agreement that the nurse will cease practice for failure to comply with the terms and conditions of the contract pending further action by the Board or following the third relapse.

(4) The Board shall enter into a separate contract with the nurse's employer to address conditions of the workplace, confidentiality of information, reporting requirements and other conditions necessary for the nurse to successfully complete his/her participation in the Nurse Monitoring Program. For a nurse who is enrolled in a nursing education program, the Board shall enter into a contract with the school of nursing to address conditions of clinical experience, confidentiality of information, reporting requirements and other conditions necessary for successful completion of the Nurse Monitoring Program. The contract shall address the following issues:

(a) Access to narcotics;

(b) Level of supervision;

(c) Worksite and working conditions;

(d) Immediate notification to the Nurse Monitoring Program by the employer regarding any change in employment status, e.g., resignation, termination or change in position/responsibility. In addition to the contract, the Board will supply the employee or school of nursing with a summary of the nurse's history and reasons he/she is in the Nurse Monitoring Program to assist the employer or school of nursing in their supervision of the nurse.

(5) The nurse is financially responsible for all costs of participation in the Nurse Monitoring Program, including the cost of random body fluid testing and the cost of treatment.

(6) The length of time in the Nurse Monitoring Program shall be a minimum of five (5) years with a yearly review of the content of the nurse's contract with the Nurse Monitoring Program. Of the five (5) years, at least three (3) years must include monitored nursing practice. Participation in a

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monitoring program in another state may be credited towards the five (5) year period in Oregon.

(7) Participants in the Nurse Monitoring Program and their records may be referred to an investigator for the Board for investigation and possible disciplinary action under the following conditions:

- (a) Failure to comply with the terms and conditions of the contract;
- (b) Failure to correct deficiencies in the nurse's recovery program which lead to relapse;
- (c) The occurrence of a third relapse after receiving treatment specific for substance dependence/abuse.

(8) Successful completion of the Nurse Monitoring Program is contingent on a minimum of five (5) years participation, of which three (3) years must be monitored nursing practice and compliance with all terms and conditions of the contract. If a nurse does not practice nursing during the five (5) year period, participation in the Nurse Monitoring Program will resume upon entrance into a re-entry program and/or employment in nursing.

(9) Relapse during the final year of participation in the Nurse Monitoring Program will extend the period of participation in the program for a minimum of an additional year.

(10) Any exception to the minimum of five (5) years of participation in the Nurse Monitoring Program shall be considered on an individual basis and may be granted by the Nurse Monitoring Program under one or more of the following conditions:

- (a) The nurse has successfully completed a minimum of three (3) years of monitored nursing practice;
- (b) The public health, safety and welfare is not compromised by early release from the Nurse Monitoring Program.

(11) A graduate of the Nurse Monitoring Program who has a relapse may be readmitted to the Nurse Monitoring Program for a minimum of one (1) year. A nurse will be permitted a maximum of three admissions to the Nurse Monitoring Program.

Stat. Auth.: ORS 678.112
Stats. Implemented: ORS 678.112
Hist.: NB 3-1991, f. & cert. ef. 9-25-91; NB 10-1993, f. & cert. ef. 10-15-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 2-1997, f. & cert. ef. 1-2-97; BN 11-2001, f. & cert. ef. 7-24-01; Suspended by BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-046-0030

Criteria for Admission and Completion of the Nurse Monitoring Program for Nurses with Physical Disabilities

(1) A registered nurse or licensed practical nurse may seek admission to the Nurse Monitoring Program in one of the following ways:

- (a) By self-referral or admission to a physical disorder which prevents the nurse from safely practicing nursing;
- (b) By identification of a physical disorder which prevents safe practice in conjunction with a complaint filed against the licensee;
- (c) By referral from a family member, friend, nurse peer, or employer.

(2) Upon identification of a physical disorder which prevents safe practice, the nurse shall obtain an evaluation from a health care professional who is qualified to evaluate the nurse's physical disorder and make recommendations for treatment of the disorder.

(3) The nurse shall enter into a contract with the Nurse Monitoring Program which shall include, but it is not limited to:

- (a) Compliance with treatment recommendations including medication management;
- (b) Agreement to cease nursing practice if necessary, and not return to practice until the Nurse Monitoring Program, in consultation with the nurse's primary health care provider, determines that the nurse is able to safely return to the practice of nursing;
- (c) Random body fluid testing for compliance with medical management, if appropriate;
- (d) Notification to the current employers or to a school of nursing, if applicable, of participation in the Nurse Monitoring Program and of any practice restrictions in the nurse's contract with the Nurse Monitoring Program;
- (e) Disclosure to a prospective employer of participation in the Nurse Monitoring Program once a job offer has been made or to a school of nursing upon acceptance into the program.
- (f) Regular contact with the Nurse Monitoring Program;
- (g) A signed release of information with the primary health care provider or other health care professional so the Nurse Monitoring Program may receive and provide information;
- (h) Notification to the Nurse Monitoring Program if the nurse applies for endorsement or renewal of licensure to any state;

(i) Disclosure of participation in the Nurse Monitoring Program when the nurse applies for licensure in any other state;

(j) Notification to all states of current licensure of participation in the Nurse Monitoring Program.

(k) Agreement that the nurse will cease practice for failure to comply with terms and conditions of the contract pending further action by the Board.

(4) The Board shall enter into a separate contract with the nurse's employer to address conditions of the workplace, confidentiality of information, reporting requirements and other conditions necessary for the nurse to successfully complete his/her participation in the Nurse Monitoring Program. For a nurse who is enrolled in a nursing education program, the Board shall enter into a contract with the school of nursing to address conditions of clinical experience, confidentiality of information, reporting requirements and other conditions necessary for successful completion of the Nurse Monitoring Program. The contract shall address the following issues:

- (a) Level of supervision;
- (b) Worksite and working conditions;

(c) Immediate notification to the Nurse Monitoring Program by the employer regarding any change in employment status, e.g., resignation, termination or change in position responsibility. In addition to the contract, the Board will provide the employer or school of nursing a summary of the nurse's history and reasons for entrance into the Nurse Monitoring Program to assist in supervision of the nurse.

(5) The nurse is financially responsible for all costs of participating in the Nurse Monitoring Program, including the cost of random body fluid testing and treatment.

(6) The length of time in the Nurse Monitoring Program shall be a minimum of five (5) years, of which three (3) years must be monitored nursing practice, with a yearly review of the content of the nurse's contract with the Nurse Monitoring Program.

(7) Participants in the Nurse Monitoring Program and their records may be referred to an investigator for the Board for investigation and possible disciplinary action if the nurse fails to comply with the terms and conditions of the contract.

(8) Successful completion of the Nurse Monitoring Program is contingent on a minimum of five (5) years participation, three (3) years of monitored nursing practice and compliance with all terms and conditions of the contract.

(9) Any exception to the minimum of five (5) years of participation in the Nurse Monitoring Program shall be considered on an individual basis and may be granted if the public health, safety and welfare is not compromised by early release from the Nurse Monitoring Program.

Stat. Auth.: ORS 678.112
Stats. Implemented: ORS 678.112
Hist.: NB 3-1991, f. & cert. ef. 9-25-91; NB 10-1993, f. & cert. ef. 10-15-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 2-1997, f. & cert. ef. 1-2-97; BN 11-2001, f. & cert. ef. 7-24-01; Suspended by BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-046-0040

Criteria for Admission and Completion of the Nurse Monitoring Program for Nurses with Psychiatric Disorders

(1) A registered nurse or licensed practical nurse may seek admission to the Nurse Monitoring Program in one of the following ways:

- (a) By self-referral or admission of a psychiatric disorder which prevents the nurse's ability to safely practice nursing;
- (b) By identification of the psychiatric disorder in conjunction with a complaint filed against the licensee;
- (c) By referral from a family member, friend, nurse peer, or employer.

(2) Upon identification of a psychiatric disorder which prevents safe practice, the nurse shall:

- (a) Obtain an evaluation from a health care professional qualified to evaluate psychiatric disorders and make treatment recommendations;
- (b) Participate in a treatment program specific for the psychiatric disorder.

(3) The nurse shall enter into a contract with the Nurse Monitoring Program which shall include, but is not limited to:

- (a) Compliance with the treatment program recommendations, including medication management;
- (b) Random body fluid testing for compliance with medication management, if appropriate;
- (c) Agreement to cease nursing practice if necessary, and not return to practice until the Nurse Monitoring Program, in consultation with the nurse's mental health treatment provider, determines that the nurse is able to safely return to the practice of nursing;

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(d) Notification to the current employer and to a school of nursing, if applicable, of participation in the Nurse Monitoring Program and of any practice restrictions in the nurse's contract with the Nurse Monitoring Program;

(e) Disclosure to a prospective employer of participation in the Nurse Monitoring Program once a job offer has been made or school of nursing upon acceptance into the program.

(f) Regular contact with the Nurse Monitoring Program;

(g) A signed release of information with the mental health treatment providers so the Nurse Monitoring Program may receive information upon request;

(h) Notification of the Nurse Monitoring Program if the nurse applies for endorsement or renewal of licensure to any state;

(i) Disclosure of participation in the Nurse Monitoring Program when the nurse applies for licensure in any other state;

(j) Notification of all states of current licensure of participation in the Nurse Monitoring Program.

(k) Agreement that the nurse will cease practice for failure to comply with the terms and conditions of the contract pending further action by the Board.

(4) The Board shall enter into a separate contract with the nurse's employer to address conditions of the workplace, confidentiality of information, reporting requirements and other conditions necessary for the nurse to successfully complete his/her participation in the Nurse Monitoring Program. For a nurse who is enrolled in a nursing education program, the Board shall enter into a contract with the school of nursing to address conditions of clinical experience, confidentiality of information, reporting requirements and other conditions necessary for successful completion of the Nurse Monitoring Program. The contract shall address the following issues:

(a) Level of supervision;

(b) Worksite and working conditions;

(c) Immediate notification to the Nurse Monitoring Program by the employer regarding any change in employment status, e.g., resignation, termination or change in position responsibility. In addition to the contract, the Board will provide the employer or school of nursing a summary of the nurse's history and reasons for entrance into the Nurse Monitoring Program to assist in supervision of the nurse.

(5) The nurse is financially responsible for all costs of participation in the Nurse Monitoring Program, including the costs of random body fluid testing and the cost of mental health treatment.

(6) The length of time in the Nurse Monitoring Program shall be a minimum of five (5) years, of which three (3) years must be monitored nursing practice, with a yearly review of the content of the nurse's contract with the Nurse Monitoring Program.

(7) Participants in the Nurse Monitoring Program and their records may be referred to an investigator for the Board for investigation and possible disciplinary action if the nurse fails to comply with the terms and conditions of the contract.

(8) Successful completion of the Nurse Monitoring Program is contingent on a minimum of five (5) years participation, three (3) years of monitored nursing practice and compliance with all terms and conditions of the contract.

(9) Any exception to the minimum of five (5) years of participation in the Nurse Monitoring Program shall be considered on an individual basis and may be granted if the public health, safety and welfare is not compromised by early release from the Nurse Monitoring Program.

Stat. Auth.: ORS 678.112

Stats. Implemented: ORS 678.112

Hist.: NB 3-1991, f. & cert. ef. 9-25-91; NB 10-1993, f. & cert. ef. 10-15-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 2-1997, f. & cert. ef. 1-2-97; BN 11-2001, f. & cert. ef. 7-24-01; Suspended by BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0000

Purpose, Intent and Scope

The Board believes that licensees who develop substance use disorders, mental health disorders, or both disorders can, with appropriate treatment, be assisted with recovery and return to the practice of nursing. It is the intent of the Board that a licensee with a substance use disorder, a mental health disorder or both types of disorders may have the opportunity to enter the Health Professionals' Services Program (HPSP). Participation in the Health Professionals Services Program does not shield the licensee from disciplinary action.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0005

Definitions

The following definitions apply to OAR chapter 851, division 070, except as otherwise stated in the definition:

(1) "Abstinence" means the avoidance of all intoxicating substances, including but not limited to prescription or over-the-counter drugs with a potential for abuse or dependence;

(2) "Assessment or evaluation" means the process an independent third-party evaluator uses to diagnose the licensee and to recommend treatment options for the licensee.

(3) "Board" means the Oregon State Board of Nursing.

(4) "Business day" means Monday through Friday, except legal holidays as defined in ORS 187.010 (or ORS 187.020).

(5) "Diagnosis" means the principal mental health or substance use diagnosis listed in the DSM. The diagnosis is determined through the assessment and any examinations, tests or consultations suggested by the assessment and is the medically appropriate

(6) "Division" means the Department of Human Services, Addictions and Mental Health Division.

(7) "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, commonly referred to as DSM-IV-TR published by the American Psychiatric Association.

(8) "Federal regulations" means:

(a) As used in ORS 676.190(1)(f)(D), a "positive toxicology test result as determined by federal regulations pertaining to drug testing" means test results meet or exceed the cutoff concentrations shown in 49 CFR § 40.87 (2009) must be reported as substantial non-compliance, but positive toxicology results for other drugs and for alcohol may also constitute and may be reported as substantial non-compliance.

(b) As used in ORS 676.190(4)(i), requiring a "licensee to submit to random drug or alcohol testing in accordance with federal regulations" means licensees are selected for random testing by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with licensees' unique identification numbers or other comparable identifying numbers. Under the selection process used, each covered licensee shall have an equal chance of being tested each time selections are made, as described in 40 CFR § 199.105(c)(5) (2009). Random drug tests must be unannounced and the dates for administering random tests must be spread reasonably throughout the calendar year, as described in 40 CFR § 199.105(c)(7) (2009).

(9) "Fitness to practice evaluation" means the process a qualified, independent third-party evaluator uses to determine if the licensee can safely perform the essential functions of the licensee's health practice.

(10) "Final enrollment" means a self-referred licensee has provided all documentation required by OAR 851-070-0040 and has met all eligibility requirements to participate in the HPSP.

(11) "Independent third-party evaluator" means an individual who is approved by a licensee's Board to evaluate, diagnose, and offer treatment options for substance use disorders, mental health disorders or co-occurring disorders.

(12) "Individual service record" means the official permanent HPSP documentation, written or electronic, for each licensee, which contains all information required by these rules and maintained by the HPSP to demonstrate compliance with these rules.

(13) "Licensee" means a licensed practical nurse, registered nurse, or advanced practice registered nurse who is licensed or certified by the Oregon State Board of Nursing.

(14) "Mental health disorder" means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom that is identified in the DSM. "Mental health disorder" includes gambling disorders.

(15) "Monitoring agreement" means an individualized agreement between a licensee and the vendor that meets the requirements for a diversion agreement set by ORS 676.190.

(16) "Monitoring Entity" means an independent third-party that monitors licensees' HPSP enrollment status and monitoring agreement compliance.

(17) "Non-treatment compliance monitoring" means the non-medical, non-therapeutic services employed by the vendor to track and report the licensee's compliance with the monitoring agreement.

(18) "Nurse Monitoring Program" (NMP) refers to the alternative to the Board of Nursing's discipline program prior to July 1, 2010.

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(19) "Self-referred licensee" means a licensee who seeks to participate in the program without a referral from the board

(20) "Peer" means another licensee currently enrolled in the program.

(21) "Provisional enrollment" means temporary enrollment, pending verification that a self-referred licensee meets all HPSP eligibility criteria.

(22) "Substance use disorder" means a disorder related to the taking of a drug of abuse (including alcohol); to the side effects of a medication; and to a toxin exposure, including: substance use disorders (substance dependence and substance abuse) and substance-induced disorders (including but not limited to substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorders and mood disorders), as defined in DSM criteria.

(23) "Substantial non-compliance" means that a licensee is in violation of the terms of his or her monitoring agreement in a way that gives rise to concerns about the licensee's ability or willingness to participate in the HPSP. Substantial non-compliance and non-compliance include, but are not limited to, the factors listed in ORS 676.190(1)(f). Conduct that occurred before a licensee entered into a monitoring agreement does not violate the terms of that monitoring agreement.

(24) "Successful completion" means that for the period of service deemed necessary by the vendor or by the licensee's Board by rule, the licensee has complied with the licensee's monitoring agreement to the satisfaction of the HPSP.

(25) "Toxicology testing" means urine testing or alternative chemical monitoring including blood, saliva, breath or hair as conducted by a laboratory certified, accredited or licensed and approved for toxicology testing.

(26) "Treatment" means the planned, specific, individualized health and behavioral health procedures, activities, services and supports that a treatment provider uses to remediate symptoms of a substance use disorder, mental health disorder or both types of disorders.

(27) "Vendor" means the entity that has contracted with the Division to conduct the HPSP.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0010

Participation in Health Professionals' Services Program

Effective July 1, 2010, the Board shall participate in the Health Professionals' Services Program and may refer eligible nurses to the HPSP in lieu of or in addition to public discipline. Only licensed practical nurses, registered nurses, and advanced practice registered nurses who meet the eligibility criteria may be referred by the Board to the Health Professionals' Services Program.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0020

Eligibility in Health Professionals Services Program

(1) Licensee must be evaluated by an independent, third-party evaluator approved by the Board. The evaluation must include a diagnosis of a substance use disorder, mental health disorder, or both types of disorders with the appropriate diagnostic code from the DSM, and treatment options.

(2) Licensee must provide a written statement agreeing to enter the HPSP in lieu of or in addition to discipline and agreeing to abide by all terms and conditions established by the Board.

(3) Licensee must enter into the "HPSP Monitoring Agreement."

(4) Licensees who have successfully graduated from either the NMP or HPSP programs and who have had a relapse may be permitted a maximum of one additional admittance into the HPSP.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0030

Procedure for Board Referrals

(1) When a complaint is received involving a licensee who may have a substance use disorder, a mental disorder, or both types of disorders, the Board staff will investigate and complete a report to be presented at a Board meeting.

(2) The Board will review the report and determine if the licensee meets the eligibility criteria for the HPSP.

(3) If licensee meets eligibility criteria and the board approves entry into the HPSP, the Board will provide a written referral. The referral must include:

(a) A copy of the report from the independent, third-party evaluator who diagnosed the Licensee;

(b) The treatment options developed by the independent third-party evaluator;

(c) A statement that the Board has investigated the licensee's professional practice and conduct, and has determined whether the licensee's professional practice, while impaired, presents or has presented a danger to the public;

(d) A description of any restrictions recommended or imposed by the Board on the licensee's professional practice; including those specific to prescribing and dispensing medications (for licensees with prescriptive authority).

(e) A written statement from the licensee agreeing to enter the HPSP in lieu of or in addition to discipline and agreeing to abide by all terms and conditions established by the vendor; and

(f) A statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the board within three business days after the licensee is arrested or convicted.

(4) A Board-referred licensee is enrolled in the program effective on the date the licensee signs the consents and the monitoring agreement required by ORS 676.190.

(5) Upon enrollment into the program, the vendor (or monitoring entity) will notify the Board and the Board will dismiss without prejudice the pending complaint at the next Board meeting.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0040

Procedure for Self- Referred Licensees

Self-referred licensees may participate in the HPSP as permitted by ORS 676.190(5).

(1) Provisional Enrollment. To be provisionally enrolled in the program, a self-referred licensee must:

(a) Sign a written consent allowing disclosure and exchange of information between the vendor, the monitoring entity, the licensee's employer, independent third-party evaluators, and treatment providers, including other health care providers;

(b) Sign a written consent allowing disclosure and exchange of information between the vendor, the Board, the monitoring entity, the licensee's employer, independent third-party evaluators and treatment providers in the event the vendor determines the licensee to be in substantial non-compliance with his or her monitoring agreement as defined in OAR 851-070-0090. The purpose of the disclosure is to permit the vendor and the monitoring entity to notify the Board if the vendor determines the licensee to be in substantial non-compliance with his or her monitoring agreement;

(c) Attest that the licensee is not, to the best of the licensee's knowledge, under investigation by his or her Board; and

(d) Agree to and sign a monitoring agreement.

(2) Upon provisional enrollment, the vendor shall send to the monitoring entity copies of the signed consents and the monitoring agreement, described in section one of this rule.

(3) Final Enrollment: To move from provisional enrollment to final enrollment in the program, a self-referred licensee must:

(a) Obtain at the licensee's own expense and provide to the vendor, an independent third-party evaluator's written evaluation containing a DSM diagnosis and diagnostic code and treatment recommendations;

(b) Agree to cooperate with the vendor's investigation to determine whether the licensee's practice while impaired presents or has presented a danger to the public; and

(c) Enter into an amended monitoring agreement, if required by the vendor.

(4) Once a self-referred licensee seeks enrollment in the HPSP, failure to complete final enrollment may constitute substantial non-compliance and may be reported to the Board.

(5) Upon final enrollment of a self-referred licensee, the vendor shall send to the monitoring entity a copy of the written evaluation by the independent third-party evaluator and a copy of the amended monitoring agreement, if any.

Stat. Auth.: ORS 676.200

Stats. Implemented: ORS 676.200

Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0050

Disqualification Criteria

Licensees, either Board-referred or self-referred, may be disqualified from entering the HPSP for factors including, but not limited to:

(1) Licensee's disciplinary history;

(2) Severity and duration of the licensee's impairment;

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- (3) Extent to which licensee's practice can be limited or managed to eliminate danger to the public;
- (4) Likelihood that licensee's impairment can be managed with treatment;
- (5) Evidence of criminal history that involves injury or endangerment to others;
- (6) A diagnosis requiring treatment because of sexual offenses or sexual misconduct;
- (7) Evidence of non-compliance with a monitoring program from other state;
- (8) Pending investigations with the Board or boards from other states;
- (9) Previous Board investigations with findings of substantiated abuse or neglect; and
- (10) Prior enrollment in, but failure to successfully complete, either the Nurse Monitoring Program or HPSP.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0060

Approval of Independent Third-Party Evaluators

- (1) To be approved by the Board as an independent third-party evaluator, an evaluator must:
 - (a) Be licensed as required by the jurisdiction in which the evaluator works;
 - (b) Have a minimum of a Master's Degree in a mental health discipline;
 - (c) Provide evidence of additional education and experience as shown by one of the following:
 - (i) Department of Transportation Substance Abuse Professional qualification;
 - (ii) Certified Alcohol and Drug Counselor II or III;
 - (iii) Board Certified in Addiction Medicine by either ASAM or American Board of Psychiatry and Neurology.
 - (d) Provide evidence of assessments at the licensure level of the licensee being evaluated
 - (e) The Board will not accept an evaluator as independent in a particular case if, in the Board's judgment, the evaluator's judgment is likely to be influenced by a personal or professional relationship with a licensee.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0070

Approval of Treatment Providers

- (1) To be approved by the Board as a treatment provider, a provider must be:
 - (a) Licensed as required by the jurisdiction in which the provider works;
 - (b) Able to provide appropriate treatment considering licensee's diagnosis, degree of impairment, level of licensure, and treatment options proposed by the independent third-party evaluator; and
 - (c) Able to obtain a urinalysis of the licensee at intake.
- (2) The Board will not accept a provider as a treatment provider in a particular case if, in the Board's judgment, the provider's judgment is likely to be influenced by a personal or professional relationship with a licensee.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0080

Licensee Responsibilities

- (1) All licensees must:
 - (a) Agree to report any arrest for or conviction of a misdemeanor or felony crime to the vendor and the Board within three business days after the licensee is arrested or convicted of the crime; and
 - (b) Comply continuously with his or her monitoring agreement, including any restrictions on his or her practice, for at least two years or longer, as specified by the Board by rule or order;
 - (c) Abstain from mind-altering or intoxicating substances or potentially addictive drugs, unless the drug is approved by the HPSP and prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee;
 - (d) Report use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours;
 - (e) Participate in a treatment plan approved by a third party;
 - (f) Limit practice as required by the HPSP;

- (g) Cooperate with supervised monitoring of practice;
- (h) Participate in a follow-up evaluation, when necessary, of licensee's fitness to practice;
- (i) Submit to random drug or alcohol testing;
- (j) Report at least weekly to the HPSP regarding the licensee's compliance with the monitoring agreement;
- (k) Report at least weekly to the HPSP regarding the licensee's compliance with the agreement;
- (l) Report any arrest for or conviction of a misdemeanor or felony crime to the HPSP within three business days after the licensee is arrested or convicted;
- (m) Report applications for licensure in other states, changes in employment and changes in practice setting;
- (n) Agree to be responsible for the cost of evaluations, toxicology testing and treatment;
- (o) Report to the HPSP any investigations or disciplinary action by any state or state agency, including Oregon;
- (p) Participate in required meetings according to the treatment plan; and
- (q) Maintain current license status.

- (2) In addition to the requirements listed in section one of this rule, self-referred licensees must also provide to the HPSP a copy of a report of the licensee's criminal history, at least once per calendar quarter or more often if required by the HPSP.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0090

Completion Requirements

- (1) To successfully complete the Health Professionals' Services Program, licensees with a substance use disorder, or with a mental health disorder and a substance use disorder, must have worked for at least two years in a monitored practice. Licensees must complete the required two years of monitored practice within four years of entering the Health Professionals' Services Program.
- (2) To successfully complete the Health Professionals' Services Program, licensees with a mental health disorder, but no substance use disorder, must have worked for at least one year in a monitored practice. Licensees must complete the required year of monitored practice within two years of entering the Health Professionals' Services Program.
- (3) The Board may extend by one year the time within which a licensee must complete the monitored practice if the licensee has remained compliant with the program.
- (4) A licensee who does not complete the required term of monitored practice will be discharged from the Health Professionals' Services Program and may be subject to discipline.
- (5) The time spent working in a monitored practice before transferring from the Nurse Monitoring Program to the Health Professionals' Services Program effective July 1, 2010, will be counted toward the required term of monitored practice.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

851-070-0100

Substantial Non-Compliance Criteria

- (1) The HPSP or the monitoring entity will report substantial non-compliance with the diversion agreement within one business day after the HPSP learns of non-compliance, including but not limited to information that a licensee:
 - (a) Engaged in criminal behavior;
 - (b) Engaged in conduct that caused injury, death or harm to the public, including engaging in sexual impropriety with a patient;
 - (c) Was impaired in a health care setting in the course of the licensee's employment;
 - (d) Received a positive toxicology test result as determined by federal regulations pertaining to drug testing;
 - (e) Violated a restriction on the licensee's practice imposed by the HPSP or the licensee's Board;
 - (f) Was admitted to the hospital for mental illness or adjudged to be mentally incompetent;
 - (g) Entered into a diversion agreement, but failed to participate in the HPSP;
 - (h) Was referred to the HPSP, but failed to enroll in the HPSP;
 - (i) Forged, tampered with, or modified a prescription;
 - (j) Violated any rules of prescriptive/dispensing authority;

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(k) Violated any provisions of OAR 851-070-0080;
(l) Violated any terms of the diversion agreement; or
(m) Failed to complete the monitored practice requirements as stated in OAR 851-070-0090.

(2) The Board, upon being notified of a licensee's substantial non-compliance will investigate and determine the appropriate sanction, which may include a limitation of licensee's practice and any other sanction, up to and including termination from the HPSP and formal discipline.

Stat. Auth.: ORS 676.200
Stats. Implemented: ORS 676.200
Hist.: BN 6-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

Rule Caption: Fee for Retired Nurse Status Eliminated.

Adm. Order No.: BN 7-2010

Filed with Sec. of State: 6-25-2010

Certified to be Effective: 6-25-10

Notice Publication Date: 5-1-2010

Rules Amended: 851-002-0010

Subject: These rules cover the agency fees. This rule amendment eliminates the fee for retired nurse status.

Rules Coordinator: KC Cotton—(971) 673-0638

851-002-0010

RN/LPN Schedule of Fees

- (1) License Renewal — \$145
- (2) Delinquent Renewal — \$12
- (3) License by Endorsement — \$195
- (4) Licensure by Examination — \$160
- (5) Written Verification of License — \$12
- (6) Limited Licenses:
 - (a) License Memorandum — \$25
 - (b) Reentry — \$95
 - (c) Extension of Reentry — \$25
- (7) Limited Licenses for Educational Experience:
 - (a) International Graduate Nursing Students — \$65
 - (b) Extension of International Graduate Nursing Students — \$25
 - (c) International RN in Short-Term Educational Experience — \$35
 - (d) International Exchange Students — \$25
 - (e) U.S. RNs in Distance Learning — \$15
 - (f) Extension of Distance Learning — \$15
- (8) Reexamination for Licensure — \$25
- (9) Reactivation — \$160
- (10) Reinstatement by Reactivation — \$160

Stat. Auth.: ORS 678.150 & 678.410
Stats. Implemented: ORS 678.410
Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & ef. 7-1-93; NB 13-1993, f. & ef. 12-20-93; NB 5-1994, f. & ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & ef. 12-7-94; NB 7-1995(Temp), f. & ef. 6-23-95; NB 2-1996, f. & ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & ef. 8-7-98; BN 11-1998, f. & ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 11-1999, f. & ef. 12-1-99; BN 6-2000, f. & ef. 4-24-00; BN 17-2002, f. & ef. 10-18-02; BN 6-2003, f. & ef. 7-7-03; BN 5-2007, f. 5-4-07, cert. ef. 7-1-07; BN 5-2009, f. & ef. 10-7-09; BN 6-2009, f. 12-17-09, cert. ef. 1-1-10; BN 7-2010, f. & ef. 6-25-10

Rule Caption: CNA 2 Registration Fee Removed.

Adm. Order No.: BN 8-2010

Filed with Sec. of State: 6-25-2010

Certified to be Effective: 6-25-10

Notice Publication Date: 5-1-2010

Rules Amended: 851-002-0040

Subject: These rules cover the agency fees. This rule amendment removes the CNA 2 registration fee.

Rules Coordinator: KC Cotton—(971) 673-0638

851-002-0040

Nursing Assistant Schedule of Fees

- (1) Certification by Examination — \$106
- (2) Certification by Endorsement — \$60
- (3) Reexamination — Manual Skills — \$45
- (4) Reexamination — Written — \$25

- (5) Oral Administration of Written Examination — \$35
- (6) Written Verification of Certification — \$10
- (7) CNA Certificate Renewal — \$60
- (8) CNA Reactivation Fee — \$5
- (9) CNA Certification for RN or LPN — \$60
- (10) CNA Certification for Student Nurses — \$60
- (11) Initial Approval CNA Training Program — \$100
- (12) Approval of Revised CNA Training Program — \$75
- (13) Reapproval of CNA Training Program — \$50
- (14) CNA Primary Instructor Approval — \$10
- (15) Initial Approval of CNA Program Director — \$25

Stat. Auth.: ORS 678.150 & 678.410
Stats. Implemented: ORS 678.410
Hist.: NB 9-1989(Temp), f. & ef. 11-24-89; NB 5-1990, f. & ef. 5-7-90; NB 7-1990(Temp), f. & ef. 7-11-90; NB 9-1990, f. & ef. 10-9-90; NB 5-1991(Temp), f. & ef. 10-15-91; NB 3-1992, f. & ef. 2-13-92; NB 12-1992, f. 12-15-92, cert. ef. 1-1-93; NB 2-1993, f. 2-8-93, cert. ef. 2-16-93; NB 15-1993, f. 12-27-93, cert. ef. 6-1-94; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-060-0300; BN 7-1999, f. 8-10-99, cert. ef. 11-1-99; BN 10-1999, f. & ef. 12-1-99; BN 6-2003, f. & ef. 7-7-03; BN 7-2004, f. & ef. 2-26-04; BN 14-2004, f. & ef. 10-26-04; BN 7-2007, f. 6-29-07, cert. ef. 1-1-08; BN 5-2009, f. & ef. 10-7-09; BN 6-2009, f. 12-17-09, cert. ef. 1-1-10; BN 8-2010, f. & ef. 6-25-10

Rule Caption: Fee Eliminated for Retired Nurse Status.

Adm. Order No.: BN 9-2010

Filed with Sec. of State: 6-25-2010

Certified to be Effective: 6-25-10

Notice Publication Date: 5-1-2010

Rules Amended: 851-031-0086

Subject: These rules cover standards for licensure of registered nurses and licensed practical nurses. This rule amendment eliminates the fee for retired nurse status.

Rules Coordinator: KC Cotton—(971) 673-0638

851-031-0086

Retired Oregon Nurse Status

(1) A nurse currently or previously licensed in good standing in Oregon is eligible to apply for Retired Nurse status if the nurse held an unencumbered Oregon nursing license.

(2) All licenses shall be retired simultaneously.

(3) To receive Retired Nurse status a nurse shall:

(a) Hold a current unencumbered license to practice nursing in Oregon; or

(b) Have been licensed in good standing in Oregon; and

(c) Indicate an intent to retire from nursing practice; and

(d) Apply using forms and instructions provided by the Board; and

(e) Sign a disclaimer acknowledging that Retired Nurse status is not an authorization to practice nursing; and

(4) A nurse with Retired Nurse Status must indicate "Retired" when using the title nurse. (e.g. RN, Retired, LPN, Retired, NP, Retired, CNS, Retired, CRNA, Retired).

Stat. Auth.: ORS 678.031 – 678.050
Stats. Implemented: ORS 678.031 & 678.050
Hist.: BN 17-2002, f. & ef. 10-18-02; BN 1-2003, f. & ef. 3-6-03; BN 9-2010, f. & ef. 6-25-10

Rule Caption: Revision of Rules Relating to Standards for Nursing Assistants and Medication Aides.

Adm. Order No.: BN 10-2010

Filed with Sec. of State: 6-25-2010

Certified to be Effective: 6-25-10

Notice Publication Date: 5-1-2010

Rules Amended: 851-062-0010, 851-062-0016, 851-062-0020, 851-062-0050, 851-062-0055, 851-062-0070, 851-062-0100, 851-062-0110

Rules Repealed: 851-062-0005, 851-062-0015

Subject: These rules establish the standards for certification of nursing assistants and medication aides. These rules amendments update the language related to the implementation of the CNA 2 level, add language to permit a RN or LPN with a current, unencumbered license to obtain a CNA 2, provide clarification on the process for a student nurse to obtain a CNA 2, and introduce language related to reactivation of a CNA 2.

Rules Coordinator: KC Cotton—(971) 673-0638

ADMINISTRATIVE RULES

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.

(3) "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.

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

(5) "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.

(6) "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.

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

(8) "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.

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

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

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

(12) "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.

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

(14) "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.

(15) 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.

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

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

(18) "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.

(19) "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.

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

(21) "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).

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

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

(24) "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.

(25) "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

851-062-0016

CNA 2 Categories

(1) The Board has approved three CNA 2 categories: Acute Care, Dementia Care, and Restorative Care.

(2) Other categories as subsequently established by the Board.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.040, 678.050, 678.150

Hist.: BN 2-2004, f. 1-29-04, cert. ef. 2-12-04; BN 14-2006, f. & cert. ef. 11-29-06; BN 10-2010, f. & cert. ef. 6-25-10

851-062-0020

Certification of Nursing Assistants Required

(1) A CNA must have a current, valid Oregon CNA 1 certificate and be listed on the Oregon CNA Registry prior to performing CNA 1 authorized duties. Nursing assistants who perform CNA 1 authorized duties as an employee of a licensed nursing facility in the State of Oregon must obtain Oregon CNA 1 certification, according to these rules, no later than four months after the date of hire.

(2) A nursing assistant who is enrolled in an approved nursing assistant level 1 training program that meets the standards set forth in OAR 851-061-0010 through OAR 851-061-0130 may perform nursing assistant duties with appropriate supervision.

(3) Unlicensed persons who are performing tasks that have been delegated to them by a Registered Nurse according to OAR 851-047-0000 through OAR 851-047-0040 may be certified or may be exempted from the requirement for certification.

(4) Successful completion of a Board-approved training program, alone, does not result in the granting of a CNA certificate. The training program is one element of certification requirements. All requirements must be met before the Board grants certification.

(5) A RN, LPN, student nurse or unlicensed graduate of a school of nursing is required to have current CNA 1 certification before assuming a CNA position and identifying himself or herself as a CNA. The RN or LPN employed as a CNA must not perform duties outside of the CNA authorized duties.

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.440 & 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 8-2008, f. & cert. ef. 11-26-08; BN 10-2010, f. & cert. ef. 6-25-10

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.

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(C) A nurse in any U.S. state or jurisdiction who has had disciplinary action taken against the license will be considered on an individual basis to determine whether the individual is able to safely perform CNA 1 authorized duties.

(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 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.

(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 had disciplinary action taken against the license will be considered on an individual basis to determine whether the individual is able to safely perform CNA 2 authorized duties.

(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

851-062-0055

Competency Examination Accommodations, Controls, Results, Reexamination

(1) An applicant for the competency examination must be able to perform nursing assistant duties safely, without risk to his/her own health and safety or to the health and safety of others.

(a) An applicant with a qualifying disability, who requires accommodation at the test site, shall:

(A) Submit a Request for Accommodation; and

(B) Submit documentation from the provider who rendered the diagnosis including:

(i) Specific diagnosis and testing limitations; and

(ii) Specific recommendation for accommodations;

(iii) Printed name, signature and business telephone number of the health care provider or professional; and

(iv) Signed release necessary to speak to provider about the condition as it relates to test taking.

(b) An applicant who has been ill or had a prescription from a health care provider or professional for temporary restriction of activities must present a medical release for full return to normal activity prior to taking the manual skills portion of the exam.

(c) English as a second language does not qualify for special testing accommodation.

(2) Controls:

(a) Reference materials, including dictionaries, are prohibited at the test site.

(b) Translators, unless as an approved accommodation for a qualifying disability, are prohibited at the test site. This includes written materials or documents used for translating one language to another and electronic devices used for translation purposes.

(3) Examination results shall be mailed to the applicant at the applicant's address of record and shall not be released by telephone.

(4) Re-examination:

(a) An applicant who fails and is eligible to retake the competency examination shall submit the appropriate application and examination fee.

(b) An applicant who fails the competency examination three times must complete another Board-approved nursing assistant level 1 training program prior to re-examination.

(5) Failure to take the examination or to reschedule the examination in advance will result in re-examination fees unless the absence has been excused by the testing service.

(6) Current certification may be verified using the Board's internet verification system.

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 2-2004, f. 1-29-04, cert. ef. 2-12-04; BN 6-2005, f. & cert. ef. 6-30-05; BN 10-2010, f. & cert. ef. 6-25-10

851-062-0070

Renewal or Reactivation of Certification

(1) The expiration date of a CNA certificate occurs biennially the midnight before the individual's birthdate:

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(a) For individuals born in odd numbered years the certificate expires in odd numbered years.

(b) For individuals born in even numbered years the certificate expires in even numbered years.

(c) Persons whose birthdate falls on February 29 shall be treated as if the birthdate were March 1 for purpose of establishing the expiration date.

(2) The certificate shall automatically expire if the CNA fails to renew by the expiration date.

(a) A CNA may not work as a CNA with an expired certificate.

(b) Failure to receive the application for renewal shall not relieve the CNA of the responsibility of renewing the certificate by the expiration date.

(3) To renew certification a CNA must, prior to the certificate expiration date:

(a) Submit a completed application using forms and instructions provided by the Board;

(b) Pay renewal fees established by the Board;

(c) Document paid employment:

(A) Document at least 400 hours of paid employment as a CNA within the CNA or CMA authorized duties, under supervision or monitoring by a nurse, in the two years immediately preceding the certificate expiration date.

(B) A CNA who has been certified for less than two years is exempt from the requirement in OAR 851-062-0070(3)(c)(A).

(d) A nursing assistant who cannot meet all the practice requirements for renewal in OAR 851-062-0070(3)(c)(A) may renew certification upon passing the competency examination.

(A) A nursing assistant has three attempts within two years of the expiration date on the certificate to pass the competency examination.

(B) A nursing assistant who fails to pass the competency examination in three attempts or within two years of the expiration date on the certificate may become certified by completing a Board-approved nursing assistant training program and then passing the competency examination.

(4) To reactivate certification, within two years after the certificate expiration date:

(a) Submit a completed application using forms and instructions provided by the Board;

(b) Pay the fees established by the Board; and

(c) Document at least 400 hours of paid employment as a CNA under supervision or monitoring by a nurse, or the successful completion of the competency exam, within two years immediately preceding receipt of application.

(d) A nursing assistant who cannot meet all the requirements for reactivation in OAR 851-062-0070(4)(c) must apply for and pass the competency examination within three attempts and within two years of the expiration date on the certificate.

(e) A nursing assistant who fails to pass the competency examination in three attempts or within two years of the expiration date on the certificate may become certified by completing a Board-approved training program and then passing the competency examination.

(f) Individuals whose CNA 2 has been expired for less than two years may reactivate their CNA 2 once their CNA 1 is current.

(5) Individuals whose CNA 1 certificate has been expired for more than two years are required to take a Board-approved nursing assistant training program and pass the competency examination according to OAR 851-062-0050(1) to reactivate certification.

(6) Individuals whose CNA 2 category designation has been expired for more than two years are required to take a Board-approved CNA 2 training program and pass the competency examination to reactivate the CNA 2.

(7) A current licensed RN or LPN may use their RN or LPN practice hours within the last two years as part or all of the required 400 hours of paid employment for their CNA renewal.

(8) An enrolled nursing student may renew without documentation of paid employment.

(9) A former nursing student may use clinical practice hours in the nursing program within the last two years as part or all of the required 400 hours in lieu of paid employment.

(10) Information provided to the Board to establish eligibility for renewal is subject to audit. Falsification of an application is grounds for disciplinary action.

(11) An applicant for renewal must answer all mandatory questions on the application form, including those about employment and education.

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 10-2010, f. & cert. ef. 6-25-10

851-062-0100

CMA Examination

(1) The medication aide examination shall be administered and evaluated only by the Board or by a Board-approved entity.

(2) Examination sites and dates shall be determined by the Board or a Board-approved entity.

(3) An applicant shall be eligible for examination for one year from the date of completion of the medication aide training program.

(4) An application shall be valid for the period of eligibility to test.

(5) An applicant who fails to pass the Board-administered medication aide examination within one year of completion of the training program and within three attempts shall not be eligible to re-apply for the examination except that the applicant may re-enroll and successfully complete a Board-approved medication training program.

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

851-062-0110

CMA Renewal and Continuing Education

Renewal of the CMA certificate is concurrent with the renewal of CNA 1 as described in these rules.

(1) The CMA is required to:

(a) Participate in at least eight hours of medication related continuing education in the 24 months immediately prior to expiration of certificate and to submit documentation of attendance with the application for Renewal of CMA Certification.

(A) The following are acceptable methods of meeting the medication aide continuing education requirement:

(i) Facility-based classes dealing with the medications used at that facility;

(ii) Medication classes taught by a licensed nurse, pharmacist or representative of a pharmaceutical company;

(iii) Repeating classes offered for medication aide students;

(iv) Video material when used as part of a presentation by an instructor;

(v) Infection control classes when the content is medication related;

(vi) Noninjectable medication related continuing education in recognized nursing journals; or

(vii) Individual tutoring sessions by a nurse or pharmacist.

(B) The following are not acceptable toward meeting the medication aide continuing education requirement:

(i) TV programs;

(ii) Reading articles in non-nursing magazines;

(iii) CPR classes;

(iv) Classes dealing with injectable medications or IV medications; or

(v) Job orientation.

(C) A CMA who is enrolled in a basic nursing education program has satisfied the requirement for medication related continuing education.

(b) Perform at least 400 hours of authorized medication aide duties under supervision or monitoring by a nurse in the 24 months immediately prior to expiration of certification.

(c) Affirm and document paid employment as a CMA under supervision or monitoring by a nurse and completion of continuing education.

(d) For a CMA who has been certified less than two years:

(A) The continuing education requirement will be prorated; and

(B) The paid employment requirement is waived.

(2) A CMA who has not performed at least 400 hours of authorized medication aide duties under the supervision or monitoring by a nurse or has not completed the eight hours of medication related continuing education in the 24 months immediately prior to expiration of certification must successfully complete the medication aide examination as a condition of renewing CMA certification. A CMA is eligible to renew by examination only if the individual has completed a CMA training program that was at least 80 hours in length.

(3) Employment and continuing education are subject to audit by the Board. Falsification of employment or continuing education is grounds for disciplinary action.

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

Rule Caption: Rules Revised Relating to Standards and Authorized Duties for Nursing Assistants and Medication Aides.

ADMINISTRATIVE RULES

Adm. Order No.: BN 11-2010

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Rules Amended: 851-063-0020, 851-063-0030, 851-063-0035

Rules Repealed: 851-063-0040, 851-063-0050, 851-063-0060

Subject: These rules cover the standards and authorized duties for Certified Nursing Assistants and Certified Medication Aides. The rule amendments establish CNA 2 core authorized duties, remove language related to additional tasks, and reorganize the authorized duties to match the curriculum domains in the Board of Nursing's curriculum policies to make it easier to navigate the two documents.

Rules Coordinator: KC Cotton—(971) 673-0638

851-063-0020

Definitions

(1) "Activities of Daily Living" means self-care activities which a person performs independently, when able, to sustain personal needs and/or to participate in society.

(2) "Assessment" means the systematic collection of data about an individual client for the purpose of judging that person's health/illness status and actual or potential health care needs.

(3) "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.

(4) "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.

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

(6) "Certified Nursing Assistant 2 (CNA 2)" means a CNA 1 who has met requirements specified in these rules for one or more of the CNA 2 categories.

(7) "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.

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

(9) "Hand Hygiene" means those measures recommended by the Centers for Disease Control (CDC) and used by the CNA or CMA to protect themselves and others from infection. Hand hygiene includes hand-washing with soap and water, use of alcohol-based hand rubs and proper use of disposable gloves.

(10) "Monitoring" means that a Registered Nurse assesses and plans for the care of the client, delegates duties to the nursing assistant according to OAR 851-047-0000 through 851-047-0040 and monitors client outcomes as an indicator of CNA/CMA competency.

(11) "Nursing Assistant" means a person who assists licensed nursing personnel in the provision of nursing care. ORS 678.440(45)

(12) "Periodic Assessment and Evaluation" means that the RN, at regular intervals, assesses and evaluates the condition of the client and reviews, and modifies if necessary, the procedures and directions established for the provision of care. The interval shall be determined by the RN based on the condition of the client and the nature of the nursing care task(s) being performed.

(13) "PRN" means as necessary.

(14) "Site" means the specific geographic location of the facility or institution.

(15) "Site specific" means that the CNA may perform the additional task(s) of nursing care only at the site at which the task was learned or validated.

(16) "Stable/Predictable Condition" means a situation where the client's clinical and behavioral state is known, not characterized by rapid changes, and does not require frequent reassessment and evaluation. This includes clients whose deteriorating condition is predictable.

(17) "Supervision" means that the licensed nurse periodically observes and evaluates the skills and abilities of the CNA/CMA to perform authorized duties.

Stat. Auth.: ORS 678.440, 678.442 & 678.444

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2010, f. & cert. ef. 6-25-10

851-063-0030

Authorized Duties and Standards for Certified Nursing Assistants

(1) Under the supervision of a licensed nurse, the CNA may provide care and assist clients with the following tasks:

(a) Tasks associated with infection control and Standard or Transmission Based Precautions:

- (A) Bedmaking and handling of linen;
- (B) Caring for the client's environment;
- (C) Handling and disposal of hazardous wastes;
- (D) Handling of contaminated materials;
- (E) Handwashing and hand hygiene;
- (F) Maintaining client cleanliness and grooming; and
- (G) Utilizing personal protective equipment.

(b) Tasks associated with safety and emergency procedures:

- (A) Moving and transferring clients;
- (B) Transporting clients in wheelchairs and specialized chairs;
- (C) Turning and positioning clients;
- (D) Using lifts and safe client handling devices;
- (E) Turning oxygen on and off or transferring oxygen between wall and tank at pre-established flow rate for stable clients;

(F) Managing hazards in the workplace;

- (G) Preventing burns;
- (H) Preventing falls; and
- (I) Performing cardiopulmonary resuscitation.

(c) Tasks associated with activities of daily living (ADL):

(A) Assisting with nutrition and hydration:

- (i) Assisting with feeding;
- (ii) Measuring and recording height and weight;
- (iii) Measuring and recording intake and output;
- (iv) Positioning clients for nutritional and fluid intake;
- (v) Preventing choking and aspiration; and
- (vi) Preventing hydration.

(B) Assisting with elimination:

(i) Administering bowel evacuation suppositories that are available without a prescription;

- (ii) Administering enemas;
- (iii) Assisting with the use of bedpan and urinal;
- (iv) Assisting with toileting;
- (v) Collecting specimens: sputum, stool, and urine including clean catch urine specimens;

(vi) Providing catheter care including the application of and removal of external urinary catheters;

(vii) Providing ostomy care for established, healthy ostomy including cleaning the ostomy site and emptying the ostomy bag or changing the ostomy bag which does not adhere to the skin; and

(viii) Providing perineal and incontinence care.

(C) Assisting with personal care:

- (i) Bathing;
- (ii) Providing comfort care;
- (iii) Dressing and undressing;
- (iv) Grooming to include: application and care of dentures, eye glasses, and hearing aides.

(v) Nail care;

- (vi) Oral hygiene;
- (vii) Shampooing and caring for hair;
- (viii) Shaving; and

(ix) Skin Care to include: application of non-prescription pediculicides; application of topical, non-prescription barrier creams and ointments for prophylactic skin care; maintenance of skin integrity; prevention of pressure, friction, and shearing; and use of anti-pressure devices.

(D) Assisting with positioning devices and restraints;

(E) Assisting with restorative care:

- (i) Ambulating;
- (ii) Assisting with and encouraging the use of self-help devices for eating, grooming and other personal care tasks;
- (iii) Assisting with bowel and bladder training;

(iv) Assisting with feeding and ADL programs;

(v) Assisting with the use of crutches, walkers, or wheelchairs;

(vi) Caring for, applying, and removing antiembolus stockings, braces, orthotic devices, and prosthetic devices.

(vii) Elevating extremities;

(viii) Maintaining alignment;

(ix) Performing range of motion exercises;

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(x) Using footboards; and
(xi) Utilizing and assisting clients with devices for transferring, ambulation, and alignment.

(d) Tasks associated with observation and reporting:

(A) Assisting with coughing and deep breathing;

(B) Observing and reporting changes of condition to licensed nurse; and

(C) Measuring and recording:

(i) Temperature, apical and radial pulse, respiration and blood pressure (manual and electronic-upper arm only and orthostatic blood pressure readings);

(ii) Emesis;

(iii) Liquid stool;

(iv) Pain level using a facility approved pain scale;

(v) Pulse oximetry; and

(vi) Urinary output, both voided and from urinary drainage systems.

(e) Tasks associated with documentation.

(f) Tasks associated with end of life care.

(2) The CNA may, as an unlicensed person, provide care as delegated or assigned by a nurse pursuant to the terms and conditions in OAR 851-047-0000 through OAR 851-047-0040.

(3) ORS 678.440(5) defines the term "nursing assistant" as a person who assists licensed nursing personnel in the provision of nursing care. Consistent with that definition, a CNA must either:

(a) Be regularly supervised by a licensed nurse; or

(b) Work in a community-based care setting or other setting where there is no regularly scheduled presence of a licensed nurse provided there is periodic supervision and evaluation of clients under the provisions of OAR 851-047-0000 through 851-047-0040.

(4) Under no circumstance shall a CNA work independently without supervision or monitoring by a licensed nurse who provides assessment of clients as described in OAR 851-063-0030(3)(a)(b).

(5) A CNA may accept verbal or telephone orders for medication from a licensed health care professional who is authorized to independently diagnose and treat only when working in the following settings under the specified administrative rule:

(a) When working in Adult Foster Homes, as permitted under OAR chapter 411, division 050;

(b) When working in Residential Care Facilities, as permitted under OAR chapter 411, division 054; and

(c) When working in Assisted Living Facilities, as permitted under OAR chapter 411, division 054.

(6) Standards of Care for Certified Nursing Assistants. In the process of client care the CNA shall consistently:

(a) Apply standard precautions according to the Centers for Disease Control and Prevention guidelines;

(b) Use hand hygiene between episodes of care;

(c) Use appropriate body mechanics to prevent injury to self and client;

(d) Follow the care plan as directed by the licensed nurse;

(e) Use appropriate communication with client, client's family and friends, and coworkers;

(f) Use alternatives to physical restraints, or apply physical restraints as directed by the licensed nurse;

(g) Determine absence of pulse and/or respiration, and initiate an emergency response;

(h) Report to the licensed nurse any recognized abnormality in client's signs and symptoms;

(i) Record observations and measurements, tasks completed, and client statements about condition or care;

(j) Apply safety concepts in the workplace;

(k) Report signs of abuse, neglect, mistreatment, misappropriation or exploitation;

(l) Demonstrate respect for rights and property of clients and coworkers; and

(m) Maintain client confidentiality.

Stat. Auth.: ORS 678.440, 678.442 & 678.444

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2009, f. & cert. ef. 12-17-09; BN 11-2010, f. & cert. ef. 6-25-10

851-063-0035

Authorized Duties and Standards for CNA 2 Categories of Care

(1) Under the supervision of a licensed nurse, a CNA 2 may provide care and assist clients with the following:

(a) Tasks associated with interpersonal skills and communication;

(b) Tasks associated with observation and reporting:

(A) Observing and collecting pain responses;

(B) Relieving pain:

(i) Assisting with complementary therapies such as using pre-recorded audio/visuals for guided imagery; deep relaxation.

(ii) Planning activities in relation to pain;

(iii) Providing comfort measures;

(iv) Reporting to the nurse;

(v) Repositioning; and

(vi) Using touch to massage non-diseased tissue.

(c) Tasks associated with technical skills:

(A) Adding fluid to established post pyloric, jejunostomy and gastrostomy tube feedings;

(B) Applying sequential compression devices;

(C) Assisting with warm and cold therapies;

(D) Bladder scanning;

(E) Changing established tube feeding bags;

(F) Fingerstick capillary blood testing;

(G) Interrupting and re-establishing nasogastric (NG) suction;

(H) Reinforcing use of an incentive spirometer;

(I) Suctioning oral pharynx;

(J) Taking vital signs:

(i) Pulse- electronic; and

(ii) Blood Pressure- manual and electronic: forearm, upper arm, thigh, and lower leg pressures;

(K) Testing stool for occult blood; and

(L) Urine dip stick testing.

(d) Tasks associated with infection control:

(A) Changing dressing or ostomy appliance or bag which adheres to the skin;

(B) Obtaining sterile urine specimen from port of catheter;

(C) Discontinuing Foley catheters;

(D) Measuring, recording and/or emptying output from drainage devices and closed drainage systems; and

(E) Performing clean intermittent straight urinary catheterization for chronic conditions.

(2) In addition to 851-063-0035(1), under the supervision of a licensed nurse, the CNA 2 - Acute Care may provide care and assist clients with the following:

(a) Tasks associated with observation and reporting:

(b) Tasks associated with technical skills:

(A) Assisting patients in and out of Continuous Passive Motion machines;

(B) Obtaining rectal swab;

(C) Placing electrodes/leads and running electrocardiogram (EKG);

(D) Placing electrodes/leads for telemetry;

(E) Removing cast in non-emergent situations;

(F) Screening newborn hearing;

(G) Setting up traction equipment; and

(H) Testing gastric contents for occult blood or pH.

(c) Tasks associated with documentation.

(3) In addition to 851-063-0035(1), under the supervision of a licensed nurse, the CNA 2 - Dementia Care may provide care and assist clients with the following:

(a) Tasks associated with person-directed care;

(A) Adjust care to meet individual preferences and unique needs; and
(B) Gather information on specific strengths, abilities, and preferences of a person with dementia.

(b) Tasks associated with observation and reporting:

(A) Identify findings, patterns, habits, and behaviors that deviate from usual in a person with dementia;

(B) Recognize changes in persons with dementia that should be reported to the licensed nurse;

(C) Observe person's response to medications and notify licensed nurse when necessary;

(D) Observe and collect response to pain for the person with dementia; and

(E) Provide input to licensed nurse on person with dementia's response to interventions for problems and care plan approaches.

(c) Tasks associated with interpersonal skills/communication;

(A) Protect person with dementia and self in a crisis situation; and

(B) Use communication techniques to enhance the quality of life for a person with dementia.

(d) Tasks associated with activities of daily living (ADL);

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- (A) Utilize techniques to encourage self care for the person with dementia; and
 - (B) Coordinate ADL approaches with the person with dementia's own patterns/habits.
 - (e) Tasks associated with activities;
 - (A) Make meaningful moments for the person with dementia; and
 - (B) Support individual preferences and habits.
 - (f) Tasks associated with safety;
 - (A) Identify safety risks for a person with dementia; and
 - (B) Apply preventive/supportive/protective strategies or devices when working with a person with dementia.
 - (g) Tasks associated with environment including contributing to a safe, calm, stable, home-like environment for a person with dementia.
 - (h) Tasks associated with end of life care; and
 - (A) Recognize symptoms for a person reaching the end-of-life; and
 - (B) Provide compassionate end-of-life care.
 - (i) Tasks associated with documentation.
 - (4) In addition to 851-063-0035(1), under the supervision of a licensed nurse, the CNA 2- Restorative Care may provide care and assist clients with the following:
 - (a) Tasks associated with activities of daily living:
 - (A) Promoting and maintaining optimal independence and function;
 - (B) Segmenting tasks; and
 - (C) Using adaptive, assistive, and therapeutic equipment.
 - (b) Tasks associated with promoting nutrition and hydration;
 - (c) Tasks associated with promoting mobility:
 - (A) Applying therapeutic positioning techniques;
 - (B) Assisting patients in and out of Continuous Passive Motion machines;
 - (C) Providing range of motion on clients with complex medical problems; and
 - (D) Using adaptive, assistive, and therapeutic equipment;
 - (d) Tasks associated with promoting functional abilities; and
 - (e) Tasks associated with documentation.
 - (5) Standards of Care for CNA 2. In the process of client care the CNA 2 shall consistently apply standards set for CNA 1s and:
 - (a) Establish competency as a CNA 2;
 - (b) Maintain competency as a CNA 2;
 - (c) Perform within authorized duties of each CNA 2 category in which the CNA has established competency.
- Stat. Auth.: ORS 678.440 & 678.442
Stats. Implemented: ORS 678.440 & 678.442
Hist.: BN10-2007, f. & cert. ef. 10-1-07; BN 2-2009, f. & cert. ef. 5-15-09; BN 11-2009, f. & cert. ef. 12-17-09; BN 11-2010, f. & cert. ef. 6-25-10

Board of Parole and Post-Prison Supervision Chapter 255

Rule Caption: Amends definitions to update language.
Adm. Order No.: PAR 4-2010(Temp)
Filed with Sec. of State: 7-2-2010
Certified to be Effective: 7-6-10 thru 1-1-11
Notice Publication Date:
Rules Amended: 255-005-0005
Subject: Amends definitions of a victim to update new language adopted by the Board.
Rules Coordinator: Michelle Mooney—(503) 945-0914

255-005-0005

Definitions

- (1) "Abscond": Unauthorized absence from parole or post-prison supervision.
- (2) "Active Community Supervision": A period of supervision in the community, requiring the supervising officer's regular contact and monitoring to assure that the supervisee complies with the conditions of parole or post-prison supervision, has committed no new crimes and has paid restitution, attorney fees, and compensatory fines, if required.
- (3) "Active Supervision": Supervision requiring the supervising officer's regular contact and monitoring to assure continued compliance with the general and special conditions of parole or post-prison supervision. "Active Supervision" shall not include:
 - (a) The period of confinement in a local, state, or federal correctional facility while serving on parole or post-prison supervision;
 - (b) The period of time between the suspension of parole or post-prison supervision and the date parole or post-prison supervision is continued;

- (c) Inactive parole or inactive post-prison supervision;
- (d) Involuntary commitment to a state or federal psychiatric facility.
- (4) "Administrative Sanction": Local, structured, or intermediate sanctions as those terms used in OAR 291-058-0010 etal, and may include periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.
- (5) "Aggravation": The factors or elements surrounding the crime which appear to increase the seriousness of the criminal episode or reflect on the character of the offender pursuant to Exhibit E-1 and E-3.
- (6) "BAF": A Board order after a decision called a "Board Action Form".
- (7) "Base Range": The range for each crime category reflected in Exhibit C under the "excellent" column.
- (8) "Board": Board of Parole and Post-Prison Supervision.
- (9) "Board Review Packet": The information the Board shall consider at the inmate's hearing. Each of the Divisions which establishes a hearing shall list the contents of the packet.
- (10) "Compensatory Fines": A court-imposed penalty for the commission of a crime resulting in injury for which the person injured has a remedy by civil action (unless the issue of punitive damages has been previously decided on a civil case arising out of the same act and transaction). The court may award compensatory fines in addition to restitution.
- (11) "Correctional Facility": Any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order. Correctional Facility includes a juvenile facility, if the juvenile is confined for a felony charge or conviction, and applies to a state hospital only as to persons detained therein after acquittal of a crime by reason of mental disease or defect or after a finding of guilty except for insanity.
- (12) "Crime Severity Rating": A classification for crimes committed prior to November 1, 1989, from a low of one (1) to a high of seven (7) assigned to each crime, based on the seriousness of the crime pursuant to Exhibits A-I, A-II, and A-III.
- (13) "Crime Spree": A set of criminal activities congruent in time or actually overlapping that are so joined by place and circumstances as to be the product of a continuous disposition or intent.
- (14) "Date of Return": The date another in-state or out-of-state jurisdiction physically returns the inmate to the Department of Corrections' custody following a hold.
- (15) "De Novo Hearing": A new initial prison term hearing, required when a court orders additional consecutive sentences for crimes which occurred prior to the first prison term hearing.
- (16) "Escape":
 - (a) The unlawful or unauthorized departure from custody, a correctional facility or any form of temporary release or transitional leave;
 - (b) Includes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board;
 - (c) Does not include failure to comply with provisions of a conditional or security release as in ORS 135.245.
- (17) "Future Disposition Hearing": A hearing the Board may set at its discretion for purposes of deciding whether to deny or grant re-release for a violation of parole or post-prison supervision when authorized by law.
- (18) "Gang Member": A person who associates with a group which identifies itself through the use of a name, unique appearance, language (including hand signs), the claiming of geographical territory, or the espousing of a distinctive belief system and one of the purposes of the group is criminal activity.
- (19) "Gang-Related Activity": Crime committed by a gang member:
 - (a) With other known gang members;
 - (b) Against other known gang members; or
 - (c) Against a person who is not a gang member; in order to further the purposes of the gang or impress other gang members.
- (20) "History/Risk Score": A rating from a high of eleven (11) to a low of zero (0) points, reflecting the prisoner's prior record and other factors which predict the likelihood of success on parole pursuant to Exhibit B, Part I and Part II.
- (21) "Inactive Parole and "Inactive Post-Prison Supervision": The offender remains under supervision however;
 - (a) There is no direct supervision by a supervising officer and no requirement of regular reporting;
 - (b) There are no additional supervision fees; and
 - (c) The offender remains subject to arrest by a supervising officer for violation of conditions of supervision and return to active supervision at any time until expiration of the sentence or post-prison supervision term as outlined in Division 94; and

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(d) (b) and (c) do not apply to those offenders being supervised in another state via Interstate Compact. Those offenders remain on active parole or post-prison supervision.

(22) "In Camera Hearing": The inspection of a document by the Hearings Officer in private before the document may be introduced as evidence.

(23) "Initial Parole Release Date": The date, by month, day and year, assigned to a prisoner for parole release based on the prisoner's matrix range, aggravation, mitigation, and judicially imposed minimum sentence(s).

(24) "Inmate": Any person under the supervision of the Department of Corrections or a local supervisory authority who is not on parole, post-prison supervision or probation status (also referred to as prisoner).

(25) "Inoperative Time": Time spent on abscond, escape, or unauthorized departure from custody, leave, parole or post-prison supervision, which does not count toward service of the sentence.

(26) "Intensive Supervision": means enhanced level of supervision exceeding a county's high risk level supervision standards. Intensive supervision may include, but not be limited to, electronic monitoring, house arrest, curfew, day reporting, supervised housing, multiple supervising officers, adjunct surveillance by law enforcement or other specialists, increased face-to-face offender contacts in the community, increased collateral contacts (such as with family, therapist and employer), community notification, geographic restrictions, offender mileage logs, medication monitoring (such as depo provera, psychotropics, antabuse), intensive outpatient or residential treatment programming, urinalysis, and polygraph.

(27) "Less Than the Sum of the Terms": An action by the Board whereby one or more of the consecutive ranges are treated as if they are concurrent.

(28) "Mail Date" or "Mailed on Date": Is the date from which the Board calculates the timelines of receipt of Administrative Review Requests and other time sensitive responses. The date is computer generated and scheduled to insure actual mailing occurred on or before the listed date.

(29) "Matrix Ranges": Ranges of months within which the Board has the discretion to set a prison term. The ranges are based on crime severity ratings and history/risk scores.

(30) "The Matrix": A table which displays the matrix ranges by showing the intersection of the crime severity rating and the history/risk score pursuant to Exhibit C.

(31) "Mitigation": The factors or elements surrounding the crime which appear to decrease the seriousness of the criminal episode or reflect on the character of the prisoner pursuant to Exhibit E-2 and E-3.

(32) "Offender": Any person under the supervision of the Department of Corrections or a local supervisory authority who is not presently in the custody of a correctional facility, including persons on probation, parole or post-prison supervision.

(33) "Parole": Applies to offenders whose crime(s) were committed before November 1, 1989. A Board authorized conditional release from a state correctional facility into the community or to a detainer.

(34) "Particularly Violent or Otherwise Dangerous Criminal Conduct": Conduct which is not merely unpleasant or offensive, but which is indifferent to the value of human safety or property.

(35) "Parole Board Record": The file the Board maintains for each inmate/offender containing the information listed in ORS 144.185.

(36) "Period Under Review": Under Division 40, the time already served on the prison term, normally the three (3) or (5) year period prior to the personal review hearing.

(37) "Post-Prison Supervision": Applies to crimes committed on or after November 1, 1989. A term, as set by statute or the court under the supervision of the Department of Corrections or a correctional agency designated by the Department or a local supervisory authority.

(38) "Principal Range": The range of months for the crime holding the highest crime severity rating. When the ranges are the same, the Board shall designate one range as the principal range.

(39) "Preponderance": Evidence which is of greater weight or more convincing than the evidence offered in opposition to it.

(40) "Probable Cause": A substantial objective basis for believing that more likely than not an offense or violation has been committed and the person to be arrested has committed it.

(41) "Prison Term": The Board established time the inmate must serve before the initial parole release date, in accordance with applicable laws and the Board's Administrative Rules.

(42) "Prison Term Hearing": The hearing at which the Board establishes an inmate's prison term and initial parole release date.

(43) "Revocation": An action by a Sanction Authority to terminate an offender's parole or post-prison supervision. Sanction Authority may resume an offender's parole or post-prison supervision following the act of revocation.

(44) "Revocation Hearing": A hearing to determine whether a violation of conditions of parole or post-prison supervision occurred and whether the Hearings Officer should recommend that the parolee or offender return to custody or continue on parole or post-prison supervision with additional conditions. (Commonly known as a Morrissey Hearing)

(45) "Sanction Authority": Means the Board for felony offenders sentenced by the court for crimes occurring before November 1, 1989, or sentenced to more than 12 months in the custody of the Department of Corrections or sentenced to 12 months or less and have additional sentences of greater than 12 months; and the Local Supervisory Authority for felony offenders sentenced by the court to 12 months or less.

(46) "Sexually Violent Dangerous Offender": means an inmate/offender who has psychopathic personality features, sexually deviant arousal patterns or interests and a history of sexual assault, and who the Board or Local Supervisory Authority finds presents a substantial probability of committing an offense listed in OAR 255-060-0008(6). "History of sexual assault" means that an inmate/offender has engaged in unlawful sexual conduct that is not revealed to the crime for which the inmate/offender is currently on parole or post-prison supervision and seriously endangered the life or safety of another person or involved a victim under twelve (12) years of age.

(47) "Serious Physical Injury": Any physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, or impairment of health or protracted loss or impairment of the function of any bodily organ.

(48) "Stranger": A person who is either unknown to a victim or with whom the victim has a superficial acquaintance or acquaintance of short duration or infrequent contact.

(49) "Subcategory": The criteria for rating criminal conduct within the crime categories based on the seriousness of the offense (Exhibit A).

(50) "Subordinate Range": Any range less than or equal to the principal range.

(51) "Subpoena Duces Tecum": A subpoena requiring the party to appear at a hearing with a document or piece of evidence to be examined at the hearing.

(52) "Summing the Ranges": Adding ranges of consecutive sentences to produce a unified range pursuant to OAR 255-035-0021.

(53) "Supervising Officer": Parole and post-prison supervision officer.

(54) "Supervisory Authority": The state or local corrections agency or official designated in each county by that county's Board of County Commissioners or County Court to operate correction supervision services, custodial facilities, or both (per ORS 144.087(1)).

(55) "Unauthorized Absence": Time spent outside a state correctional facility without Department of Corrections' or local supervisory authority's authorization, whether it is an escape or an unauthorized departure.

(56) "Unified Range": The total range computed under OAR 255-035-0021 for consecutive sentences.

(57) "Unsum the Ranges": To establish a matrix range at less than the unified range. The effect of unsumming is treatment of one or more ranges as if concurrent.

(58) "Variations": The time periods which the Board may use to set a prison term above or below the matrix range pursuant to Exhibit D.

(59) "Victim": Any person determined by the prosecuting attorney, the court or the Board to have suffered direct financial, psychological, or physical harm as a result of a crime that is the subject of a proceeding conducted by the State Board of Parole and Post Prison Supervision

[ED. NOTE: Exhibits referenced are available from the Board.]

Stat. Auth.: ORS 144.050 & 144.140

Stats. Implemented:

Hist.: 2PB 2-1986(Temp), f. & ef. 11-13-86; 2PB 3-1986(Temp), f. & ef. 12-2-86; PAR 6-1988, f. & ef. 5-19-88; PAR 7-1988, f. & ef. 7-1-88; PAR 8-1988, f. & ef. 7-1-88; PAR 9-1988(Temp), f. & ef. 7-14-88; PAR 12-1988(Temp), f. & ef. 7-20-88; PAR 13-1988(Temp), f. & ef. 8-5-88; PAR 14-1988(Temp), f. & ef. 9-20-88; PAR 18-1988, f. & ef. 12-6-88; PAR 4-1989, f. & ef. 11-1-89; PAR 5-1990, f. & cert. ef. 10-5-90; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 1-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 11-1997(Temp), f. & cert. ef. 11-14-97; PAR 1-1998, f. & cert. ef. 5-1-98; PAR 4-2000, f. & cert. ef. 2-15-00; PAR 1-2005, f. & cert. ef. 4-25-05; PAR 4-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11

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Rule Caption: Amends rule that outlines Board practice for statements made at hearings.

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Adm. Order No.: PAR 5-2010(Temp)

Filed with Sec. of State: 7-2-2010

Certified to be Effective: 7-6-10 thru 1-1-11

Notice Publication Date:

Rules Amended: 255-030-0027

Subject: Amends rules governing statements made by victims, District Attorney, and inmates at hearings to match current Board practice. Changes time limit of statements from three minutes to fifteen minutes.

Rules Coordinator: Michelle Mooney—(503) 945-0914

255-030-0027

Victim, District Attorney and Inmate Statements

(1) During the hearing, the victim(s), personally, by counsel, or by representative, and the District Attorney from the committing jurisdiction may make statements not to exceed 15 minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the Board's decision. The presiding Board member may exclude or limit irrelevant, immaterial, or unduly repetitious testimony and evidence.

(2) Following the victim(s) and the District Attorney statements, the person accompanying the inmate may make a statement not to exceed 15 minutes. The presiding Board member may grant the witness additional time upon a finding that further testimony is likely to be relevant to the Board's decision. The presiding Board member may exclude or limit irrelevant, immaterial, or unduly repetitious testimony and evidence.

Stat. Auth.: ORS 144.120(7)

Stats. Implemented: ORS 144.120(7)

Hist.: 2PB 4-1986(Temp), f. & ef. 12-2-86; PAR 3-1987, f. & ef. 4-28-87; PAR 6-1988, f. & ef. 5-19-88; PAR 1-1992, f. & cert. ef. 1-13-92; PAR 3-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 6-2000, f. & cert. ef. 6-9-00; PAR 5-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11

Rule Caption: Adopts guidelines for setting parole deferral periods.

Adm. Order No.: PAR 6-2010(Temp)

Filed with Sec. of State: 7-2-2010

Certified to be Effective: 7-6-10 thru 1-1-11

Notice Publication Date:

Rules Adopted: 255-062-0006, 255-062-0011, 255-062-0016, 255-062-0021, 255-062-0026, 255-062-0031

Subject: Division 62 rules put in place procedures for implementing statutory changes that prohibit the Board from holding a subsequent hearing after the Board denies a petition for a change in terms of confinement of an inmate convicted of aggravated murder or murder, and that prohibit the Board from granting a release date in less than two years, or more than 10 years, after the Board denies a firm parole or post-prison supervision release date for certain inmates.

Rules Coordinator: Michelle Mooney—(503) 945-0914

255-062-0006

When Parole Deferral Periods May Occur

(1) After the Board denies a petition for change in terms of confinement of an inmate convicted of aggravated murder or murder, the Board may not hold a subsequent hearing that is less than two years, or more than 10 years, from date petition is denied.

(2) After the Board denies a firm parole or post-prison supervision release date for certain inmates, the Board may not hold a subsequent hearing to consider granting a release date in less than two years, or more than 10 years, from date on which release on parole or post-prison supervision is denied.

(3) Upon finding that it is not reasonable to expect that the inmate would be granted a change in the terms of confinement or would be granted a firm release date following two years, the Board will deliberate and select a deferral date of between two and 10 years from the date of the decision.

Stat. Auth.: ORS 183.335, 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Hist.: PAR 6-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11

255-062-0011

Type of Hearing Eligible for a Deferral of More than Two Years;

OAR 255-062-0005 applies to the following hearings:

(1) *Murder Review Hearing:* If the State Board of Parole and Post-Prison Supervision denies a petition for a change in the terms of confinement filed by an inmate under ORS 163.105 or ORS 163.115, the Board

may not grant the inmate a subsequent hearing that is less than two years, or more than 10 years, from the date the petition is denied.

(2) *Exit Interview Hearing: Crime Commitment Date prior to 05/19/1988 — but on or after 10/4/1977:* If the State Board of Parole and Post-Prison Supervision concludes that an inmate suffers from a present severe emotional disturbance such as to constitute a danger to the health or safety of the community, the Board may not defer the projected parole release date for less than two years, or more than 10 years, from the date of inmate's current projected parole release date.

(3) *Exit Interview Hearing: Crime Commitment Date on or after 05/19/1988 — but before 11/1/1989:* If the State Board of Parole and Post-Prison Supervision determines that the psychological evaluation does constitute a finding that an inmate suffers from a present severe emotional disturbance such as to constitute a danger to the health or safety of the community (and after considering the psychological evaluation and all of the other evidence in the record), the Board may not defer the projected parole release date for less than two years, or more than 10 years, from the date of inmate's current projected parole release date.

(4) *Exit Interview Hearing: Crime Commitment Date on or between 1/29/1977 and 10/3/1977:* If the State Board of Parole and Post-Prison Supervision finds, based on the doctor's report and diagnosis, coupled with all the information that the Board is considering, and applying OAR 254-50-015 (1977), ORS 144.180, and pursuant to ORS 144.175 (1) (2), that deferral of the inmate's projected parole release date is necessary, the Board may not defer the projected parole release date for less than two years, or more than 10 years, from the date of inmate's current projected parole release date.

(5) *Parole Consideration Hearing:* If the State Board of Parole and Post-Prison Supervision finds that an inmate has a mental or emotional disturbance, deficiency, condition, or disorder predisposing the inmate to the commission of any crime to a degree rendering him or her a danger to the health or safety of others, and that therefore, the condition that made the inmate dangerous is not in remission and the inmate continues to remain a danger, and that the inmate cannot be adequately controlled with supervision and mental health treatment which are available in the community, the Board will conduct the next review hearing no less than two years, or more than 10 years, from the current parole consideration date.

(6) *Parole Hearing: Crime Commitment Date before 1/29/1977:* If the State Board of Parole and Post-Prison Supervision finds that there is not a reasonable probability that an inmate will, after parole, remain outside the institution without violating the law, and that the inmate's parole release is not compatible with the welfare of society, the Board may not grant the inmate a subsequent hearing that is less than two years, or more than 10 years, from the date the petition is denied.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Hist.: PAR 6-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11

255-062-0016

Factors to be Considered in Establishing a Deferral Period Longer Than Two Years

Following an interview and consideration of all the information presented at the hearing, the Board may find by unanimous vote of the members participating in the hearing, that it is not reasonable to expect that the inmate would be granted a change in the terms of confinement, or it is not reasonable to expect that the inmate would be granted a firm release date following two years, based on any of the following non-exclusive factors:

(1) A determination by the Board, based on the psychological evaluation and all the information available at the hearing, that the inmate has a mental or emotional disturbance, deficiency, condition, or disorder predisposing him/her to the commission of any crime to a degree rendering the inmate a danger to the health or safety of others;

(2) Infractions of institutional rules and discipline;

(3) Commission of crimes subsequent to the crime of conviction;

(4) Inmate's failure to demonstrate understanding of the factors that led to his/her criminal offense(s);

(5) Inmate's demonstrated lack of effort to address criminal risk factors of psychological or emotional problems;

(6) Inmate's demonstrated lack of effort to address criminal risk factors of substance abuse problems;

(7) Failure to seek and maintain appropriate work or training;

(8) Inmate's failure to seek out and benefit from programming including but not limited to sex offender treatment, batterers intervention programs, anger management, cognitive therapy, and victim impact panels where available;

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(9) Inmate's inability to experience or demonstrate remorse or empathy, including but not limited to any registered victims;

(10) Demonstrated poor planning and foresight;

(11) Demonstrated impulsivity; or

(12) Demonstrated lack of concern for others, including but not limited to any registered victims.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Hist.: PAR 6-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11

255-062-0021

Request for Interim Hearing

(1) When the Board defers the inmate's next hearing for more than two years from the date a petition is denied or from the current projected parole release date, current parole consideration date, or current parole hearing date, the inmate may submit a request for an interim hearing not earlier than the date that is two years from the date the petition is denied or from the current projected parole release date, current parole consideration date, or current parole hearing date, and at intervals of not less than two years thereafter. Such petitions must conform to the following format:

(a) Petitions must be legible and double spaced. Handwritten petitions will be accepted, although typed documents are preferred;

(b) In no more than one page, a summary outlining how the inmate qualifies for an interim hearing;

(c) From the date of the last hearing to the petition date, a current copy of the following documents:

(A) Oregon Corrections Plan;

(B) Earned time computation form;

(C) Spending Account;

(D) Disciplinary Report.

(d) In no more than 10 pages, any supporting facts, information or documents relevant to the criteria outlined in section (3) or other factors specific to how the inmate has demonstrated a significant change or progression;

(e) Although reference to rules, codes, or laws may be appropriate, the Board will not accept or consider additional pages or exhibits including copies of codebooks, manuals, other manuscripts, certificates, news articles, legal opinions, or other materials not directly related to the inmate's case.

(2) The Board shall consider the request for an interim hearing by file pass.

(3) At its discretion, the Board may request additional information from the inmate.

(4) If a petition is denied, the inmate may petition again no earlier than two years from the date of the denial.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Hist.: PAR 6-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11

255-062-0026

Interim Hearing Finding

If the Board finds, based upon a properly-submitted request for an interim hearing, that there is reasonable cause to believe that the inmate may be granted a change in the terms of confinement or a firm release date, the Board shall conduct a hearing as soon as is reasonably convenient. An interim hearing may be granted by a majority of the Board, except in cases where a full Board is required by ORS 144.054.

Stat. Auth.: ORS 144.054, 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Hist.: PAR 6-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11

255-062-0031

Final Orders

(1) When the Board grants an inmate a hearing that is more than two years from the date a petition is denied or from the current projected parole release date, current parole consideration date, or current parole hearing date, and when the Board denies a petition for an interim hearing, the Board shall issue a final order.

(2)(a) The order shall be accompanied by findings of fact and conclusions of law.

(b) The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue of fact and as to each ultimate fact required to support the board's order.

Stat. Auth.: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Stats. Implemented: ORS 144.228, 144.232, 163.105, 163.115, OL 2009 Ch. 660

Hist.: PAR 6-2010(Temp), f. 7-2-10, cert. ef. 7-6-10 thru 1-1-11

Board of Pharmacy Chapter 855

Rule Caption: Adopt rules for Charitable Pharmacies; amend definitions, fees, and rules for pharmacists and pharmacy technicians.

Adm. Order No.: BP 6-2010

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 6-29-10

Notice Publication Date: 5-1-2010

Rules Adopted: 855-019-0205, 855-044-0001, 855-044-0005, 855-044-0010, 855-044-0020, 855-044-0030, 855-044-0040, 855-044-0050, 855-044-0060, 855-044-0070, 855-044-0080, 855-044-0090

Rules Amended: 855-006-0005, 855-019-0100, 855-019-0200, 855-019-0240, 855-019-0250, 855-019-0300, 855-019-0310, 855-025-0020, 855-025-0050, 855-110-0005, 855-110-0007

Rules Repealed: 855-110-0005(T)

Subject: Amendments in Divisions 6, 19 and 25 implement OL 2009, Chapters 536 and 756 that add new requirements for licensees to report unprofessional conduct and criminal offences. Amendments to Division 19 also revise requirements for out-of-state pharmacists and add rules for Medication Therapy Management. Division 110 is amended to add a Workforce Data Collection Fee and a fee for Charitable Pharmacies, and to change the Intern license term to two years. The new rules in Div 44 implement ORS 689.774 and create a structure for the donation, storage and distribution of donated prescription drugs to needy individuals through a Charitable Prescription Drug Program.

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

855-006-0005

Definitions

As used in OAR chapter 855:

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

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

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

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

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

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

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

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

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

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

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

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

(7) "Dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container

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appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

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

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

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

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

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

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

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

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

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

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

(d) Maintaining confidentiality of patient information.

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

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

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

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

(A) Over-utilization or under-utilization;

(B) Therapeutic duplication;

(C) Drug-disease contraindications;

(D) Drug-drug interactions;

(E) Incorrect drug dosage;

(F) Incorrect duration of treatment;

(G) Drug-allergy interactions; and

(H) Clinical drug abuse or misuse.

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

(a) Cure of a disease;

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

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

(d) Prevention of a disease or symptomatology.

(18) "Pharmacy Technician" means a person licensed by the State Board of Pharmacy who assists the pharmacist in the practice of pharmacy pursuant to rules of the Board but has not completed the specialized education program pursuant to OAR855-025-0010.

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

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

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

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

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

(a) Assure retention of their purity and potency;

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

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

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

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

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

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

(a) Dispensing;

(b) Drug utilization review;

(c) Claims adjudication;

(d) Refill authorizations;

(e) Compounding; and

(f) Therapeutic interventions.

(24) "Specialized Education Program" means:

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

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

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

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

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

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

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

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

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

(A) Customers, patients or the public;

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- (B) Practitioners authorized to prescribe drugs, medications or devices;
- (C) Insurance companies;
- (D) Wholesalers, manufacturers or distributors of drugs, medications or devices;
- (E) Health care facilities;
- (F) Government agencies; or
- (G) Drug outlets.
- (b) Illegal use of drugs, medications or devices without a practitioner's prescription, or otherwise contrary to federal or state law or regulation;
- (c) Any use of intoxicants, drugs or controlled substances that endangers or could endanger the licensee or others;
- (d) Theft of drugs, medications or devices, or theft of any other property or services under circumstances which bear a demonstrable relationship to the practice of pharmacy;
- (e) Dispensing a drug, medication or device where the pharmacist knows or should know due to the apparent circumstances that the purported prescription is bogus or that the prescription is issued for other than a legitimate medical purpose, including circumstances such as:
 - (A) Type of drug prescribed;
 - (B) Amount prescribed; or
 - (C) When prescribed out of context of dose.
- (f) Any act or practice relating to the practice of pharmacy that is prohibited by state or federal law or regulation;
- (g) The disclosure of confidential information in violation of Board rule;
- (h) Engaging in collaborative drug therapy management in violation of ORS Chapter 689 and the rules of the Board;
- (i) Authorizing or permitting any person to practice pharmacy in violation of the Oregon Pharmacy Act or the rules of the Board;
- (j) Any conduct or practice by a licensee or registrant which the Board determines is contrary to accepted standards of practice; or
- (k) Failure to cooperate with the Board pursuant to OAR 855-001-0035.

(28) "Verification" means the confirmation by the pharmacist of the correctness, exactness, accuracy and completeness of the acts, tasks, or functions performed by an intern or a pharmacy technician or a certified pharmacy technician.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151, 689.155, 689.305, 689.405, OL 2009, Ch. 536
Hist.: 1PB 2-1979(Temp), f. & cert. ef. 10-3-79; 1PB 2-1980, f. & cert. ef. 4-3-80; 1PB 3-1984, f. & cert. ef. 4-16-84; PB 2-1988, f. & cert. ef. 5-3-88; PB 2-1989, f. & cert. ef. 1-30-89; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; BP 4-1998, f. & cert. ef. 8-14-98; BP 1-2006, f. & cert. ef. 6-9-06; BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10

855-019-0100

Application

(1) These rules apply to any pharmacist who is licensed to practice pharmacy in Oregon including any pharmacist located in another state who is consulting, or providing any other pharmacist service, for a patient, pharmacy or healthcare facility in Oregon.

(2) Where so indicated, these rules also apply to an intern who is licensed in Oregon.

(3) Any pharmacist who engages in the practice of pharmacy in Oregon must be licensed by the Board in accordance with the following rules.

(4) A pharmacist who is located in another state and who engages in the practice of pharmacy for a patient, drug outlet or healthcare facility in Oregon, must be licensed by the Board in accordance with the following rules, except that a pharmacist working in an out-of-state pharmacy, who only performs the professional tasks of interpretation, evaluation, DUR, counseling and verification associated with their dispensing of a drug to a patient in Oregon, is not required to be licensed by the Board unless they are the pharmacist-in-charge (PIC).

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

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.151, 689.155, 689.255
Hist.: BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10

855-019-0200

General Responsibilities of a Pharmacist

ORS 689.025 states that "the practice of pharmacy in the State of Oregon is declared a health care professional practice affecting the public health, safety and welfare". Pharmacy practice is a dynamic patient-oriented health service that applies a scientific body of knowledge to improve and

promote patient health by means of appropriate drug use, drug-related therapy, and communication for clinical and consultative purposes. A pharmacist licensed to practice pharmacy by the Board has the duty to use that degree of care, skill, diligence and professional judgment that is exercised by an ordinarily careful pharmacist in the same or similar circumstances.

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

(2) A pharmacist shall perform the duties of a pharmacist that include, but are not limited to, DUR, counseling, and final verification of the work performed by those under their supervision.

(3) A pharmacist may not delegate any task that requires the professional judgment of a pharmacist. Such tasks include but are not limited to:

- (a) Counseling to a patient or patient's agent, or other healthcare provider;
- (b) Verification;
- (c) Performing DUR;
- (d) Providing a CDTM, DRR, or MTM service;
- (e) Ordering, interpreting and monitoring of a laboratory test; and
- (f) Oral receipt or transfer of a prescription; except that
- (g) An intern under the supervision of a pharmacist may perform all the duties of a technician and the following:

- (A) Counseling;
- (B) Performing DUR;
- (C) Oral receipt or transfer of a prescription,
- (D) Immunizations if appropriately trained, and supervised by an immunization qualified pharmacist;
- (E) Other activities approved in writing by the Board.

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

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

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

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

- (a) Providing adequate safeguards against theft or diversion of prescription drugs, and records for such drugs;
- (b) Ensuring that all records and inventories are maintained in accordance with state and federal laws and rules;
- (c) Ensuring that only a pharmacist has access to the pharmacy when the pharmacy is closed.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.025, 689.151, 689.155

Hist.: PB 15-1989, f. & cert. ef. 12-26-89; PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; BP 2-1998, f. & cert. ef. 3-23-98; Renumbered from 855-041-0210, BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10

855-019-0205

Duty to Report

(1) Failure to answer completely, accurately and honestly, all questions on the application form for licensure or renewal of licensure is grounds for discipline.

(2) Failure to disclose any arrest for a felony or misdemeanor, or any indictment for a felony may result in denial of the application.

(3) A pharmacist must report to the Board within 10 days if they:

- (a) Are convicted of a misdemeanor or a felony; or
- (b) If they are arrested for a felony.

(4) A pharmacist who has reasonable cause to believe that another licensee (of the Board or any other Health Professional Regulatory Board) has engaged in prohibited or unprofessional conduct as these terms are defined in OAR 855-006-0005, must report that conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting pharmacist shall report the conduct without undue delay, but in no event later than 10 working days after the pharmacist learns of the conduct unless federal laws relating to confidentiality or the protection of health information prohibit disclosure.

(5) A pharmacist who reports to a board in good faith as required by section (4) of this rule is immune from civil liability for making the report.

(6) A pharmacist who has reasonable grounds to believe that prescription drugs or records have been lost or stolen, or any violation of these rules has occurred, must notify the Board within 10 days.

(7) A pharmacist must notify the Board in writing, within 15 days, of any change in employment location or residence address.

Stat. Auth.: ORS 689.205

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Stats. Implemented: 689.151, 689.155, OL 2009, Ch. 536
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-019-0240

Consulting Pharmacist Practice

(1) Subject to the provisions of OAR 855-019-0100(4), a consulting pharmacist who provides services to any person or facility located in Oregon, must be an Oregon licensed pharmacist.

(2) A consulting pharmacist for an Oregon licensed healthcare facility must perform all duties and functions required by the healthcare facility's licensure as well as by any relevant federal and state laws and rules.

(3) A consulting pharmacist must maintain appropriate records of their consulting activities for three years, and make them available to the Board for inspection.

(4) A consulting pharmacist is responsible for the safe custody and security of all their records and must comply with all relevant federal and state laws and regulations concerning the security and privacy of patient information.

(5) A consulting pharmacist for a facility that is required by the Board to have a consultant pharmacist but which does not have additional consulting requirements under the terms of its licensure with any other state agency, shall provide services that include but are not limited to the following:

(a) Provide the facility with policies and procedure relating to security, storage and distribution of drugs within the facility;

(b) Provide guidance on the proper documentation of drug administration or dispensing;

(c) Provide educational materials or programs as requested.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10

855-019-0250

Medication Therapy Management

(1) Medication Therapy Management (MTM) is a distinct service or group of services that is intended to optimize the therapeutic outcomes of a patient. Medication Therapy Management can be an independent service provided by a pharmacist or can be in conjunction with the provision of a medication product with the objectives of:

(a) Enhancing appropriate medication use;

(b) Improving medication adherence;

(c) Increasing detection of adverse drug events;

(d) Improving collaboration between practitioner and pharmacist; and

(e) Improving outcomes.

(2) A pharmacist that provides MTM services shall ensure that they are provided according to the individual needs of the patient and may include but are not limited to the following:

(a) Performing or otherwise obtaining the patient's health status assessment;

(b) Developing a medication treatment plan for monitoring and evaluating the patient's response to therapy;

(c) Monitoring the safety and effectiveness of the medication therapy;

(d) Selecting, initiating, modifying or administering medication therapy in consultation with the practitioner where appropriate;

(e) Performing a medication review to identify, prevent or resolve medication related problems;

(f) Monitoring the patient for adverse drug events;

(g) Providing education and training to the patient or the patient's agent on the use or administration of the medication;

(h) Documenting the delivery of care, communications with other involved healthcare providers and other appropriate documentation and records as required. Such records shall:

(A) Provide accountability and an audit trail; and

(B) Be preserved for at least three years and be made available to the Board upon request except that when records are maintained by an outside contractor, the contract must specify that the records be retained by the contractor and made available to the Board for at least three years.

(i) Providing necessary services to enhance the patient's adherence with the therapeutic regimen;

(j) Integrating the medication therapy management services within the overall health management plan for the patient; and

(k) Providing for the safe custody and security of all records and compliance with all relevant federal and state laws and regulations concerning the security and privacy of patient information.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10

855-019-0300

Duties of a Pharmacist-in-Charge

(1) In accordance with Division 41 of this chapter of rules, a pharmacy must, at all times have one Pharmacist-in-Charge (PIC) employed on a regular basis.

(2) In order to be a PIC, a pharmacist must have:

(a) Completed at least one year of pharmacy practice; or

(b) Completed a Board approved PIC training course either before the appointment or within 30 days after the appointment. With the approval of the Board, this course may be employer provided and may qualify for continuing education credit.

(3) A pharmacist may not be designated PIC of more than two pharmacies without prior written approval by the Board. If such approval is given, the pharmacist must comply with the requirements in sub-section (4)(e) of this rule.

(4) The PIC must perform the following the duties and responsibilities:

(a) When a change of PIC occurs, both outgoing and incoming PICs must report the change to the Board within 15 days of the occurrence, on a form provided by the Board;

(b) The new PIC must complete an inspection on the PIC Annual Self-Inspection Form, within 15 days of becoming PIC;

(c) The PIC may not authorize non-pharmacist employees to have unsupervised access to the pharmacy, except in the case of hospitals that do not have a 24-hour pharmacy where access may be granted as specified in OAR 855-041-0120;

(d) In a hospital only, the PIC is responsible for providing education and training to the nurse supervisor who has been designated to have access to the pharmacy department in the absence of a pharmacist;

(e) A pharmacist designated as PIC for more than one pharmacy shall personally conduct and document a quarterly compliance audit at each location. This audit shall be on the Quarterly PIC Compliance Audit Form provided by the Board;

(f) If a discrepancy is noted on a Board inspection, the PIC must submit a plan of correction within 30 days of receiving notice.

(g) The records and forms required by this section must be filed in the pharmacy, made available to the Board for inspection upon request, and must be retained for three years.

(5) The PIC is responsible for ensuring that the following activities are correctly completed:

(a) An inventory of all controlled substances must be taken within 15 days before or after the effective date of change of PIC, and must be dated and signed by the new PIC. This inventory must be maintained in the pharmacy for three years and in accordance with all federal laws and regulations;

(b) Verifying, on employment and as appropriate, but not less than annually, the licensure of all pharmacy personnel who are required to be licensed by the Board;

(c) Conducting an annual inspection of the pharmacy using the PIC Annual Self-Inspection Form provided by the Board, by February 1 each year. The completed self-inspection forms must be signed and dated by the PIC and maintained for three years from the date of completion;

(d) Conducting an annual inventory of all controlled drugs as required by OAR 855-080;

(e) Performing a quarterly inventory reconciliation of all Schedule II controlled drugs.

(f) Ensuring that all pharmacy staff have been trained appropriately for the practice site. Such training should include an annual review of the PIC Self-Inspection Report;

(g) Implementing a quality assurance plan for the pharmacy.

(h) The records and forms required by this section must be filed in the pharmacy, made available to the Board for inspection upon request, and must be retained for three years.

(6) The PIC, along with other licensed pharmacy personnel, must ensure that the pharmacy is in compliance with all state and federal laws and rules governing the practice of pharmacy and that all controlled substance records and inventories are maintained in accordance with all state and federal laws and rules.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155

Hist.: BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10

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855-019-0310

Grounds for Discipline

The State Board of Pharmacy may suspend, revoke, or restrict the license of a pharmacist or intern or may impose a civil penalty upon the pharmacist or intern upon the following grounds:

- (1) Unprofessional conduct as defined in OAR 855-006-0005;
- (2) Repeated or gross negligence;
- (3) Impairment, which means an inability to practice with reasonable competence and safety due to the habitual or excessive use of drugs or alcohol, other chemical dependency or a mental health condition;
- (4) Being found guilty by the Board of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;
- (5) Being found guilty by a court of competent jurisdiction of a felony as defined by the laws of this state;
- (6) Being found guilty by a court of competent jurisdiction of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;
- (7) Fraud or intentional misrepresentation in securing or attempting to secure the issuance or renewal of a license to practice pharmacy or a drug outlet registration;
- (8) Permitting an individual to engage in the practice of pharmacy without a license or falsely using the title of pharmacist;
- (9) Aiding and abetting an individual to engage in the practice of pharmacy without a license or falsely using the title of pharmacist;
- (10) Being found by the Board to be in violation of any violation of any of the provisions of ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.805 to 475.995 or 689.005 to 689.995 or the rules adopted pursuant thereto; or
- (11) Failure to perform appropriately the duties of a pharmacist while engaging in the practice of pharmacy as defined in ORS 689.005.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, 689.155, 689.405, OL 2009, Ch. 756

Hist.: PB 1-1989, f. & cert. ef. 1-3-89; BP 1-2002, f. & cert. ef. 1-8-02; BP 6-2005(Temp), f. & cert. ef. 6-28-05 thru 12-13-05; Administrative correction 12-20-05; Renumbered from 855-019-0055, BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10

855-025-0020

Recordkeeping Responsibilities of Pharmacy Technicians and Certified Pharmacy Technicians

- (1) Failure to answer completely, accurately and honestly, all questions on the application form for licensure or renewal of licensure is grounds for discipline.
- (2) Failure to disclose any arrest for a felony or misdemeanor, or any indictment for a felony may result in denial of the application.
- (3) A pharmacy technician or certified pharmacy technician must report to the Board within 10 days if they:
 - (a) Are convicted of a misdemeanor or a felony; or
 - (b) If they are arrested for a felony.
- (4) A pharmacy technician or certified pharmacy technician who has reasonable cause to believe that another licensee (of the Board or any other Health Professional Regulatory Board) has engaged in prohibited or unprofessional conduct as these terms are defined in OAR 855-006-0005, must report that conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting pharmacy technician or certified pharmacy technician shall report the conduct without undue delay, but in no event later than 10 working days after the reporting pharmacy technician or certified pharmacy technician learns of the conduct unless federal laws relating to confidentiality or the protection of health information prohibit disclosure.
- (5) A pharmacy technician or certified pharmacy technician who reports to a board in good faith as required by section (4) of this rule is immune from civil liability for making the report.
- (6) A pharmacy technician or certified pharmacy technician who has reasonable grounds to believe that prescription drugs or records have been lost or stolen, or any violation of these rules has occurred, must notify the Board within 10 days.
- (7) A pharmacy technician or certified pharmacy technician must notify the Board in writing, within 15 days, of any change in employment location or residence address except that a technician who is employed at more than one pharmacy need only report the name and address of the pharmacy at which the technician normally works the most hours.
- (8) A certified pharmacy technician must obtain certificates of completion that show the date and number of hours earned to document contin-

uing education credit earned and must keep the certificates of completion for three years from the date of the program.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155, Ch. 536 OL 2009

Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 6-2010, f. & cert. ef. 6-29-10

855-025-0050

Grounds for Discipline of Pharmacy Technicians and Certified Pharmacy Technicians

The State Board of Pharmacy may refuse to issue or renew; or may suspend, revoke, or restrict the license of a pharmacy technician or certified pharmacy technician; or may impose a civil penalty upon a pharmacy technician or certified pharmacy technician upon the following grounds including but not limited to:

- (1) Unprofessional conduct as defined in OAR 855-006-0005;
- (2) Repeated or gross negligence in performing the duties of a pharmacy technician or certified pharmacy technician;
- (3) Impairment, which means an inability to assist in the practice of pharmacy with reasonable competence and safety due to the habitual or excessive use of drugs or alcohol, other chemical dependency or a mental health condition;
- (4) Being found guilty by the Board of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;
- (5) Being found guilty by a court of competent jurisdiction of a felony as defined by the laws of this state;
- (6) Being found guilty by a court of competent jurisdiction of a violation of the pharmacy or drug laws of this state or rules pertaining thereto or of statutes, rules or regulations of any other state or of the federal government;
- (7) Fraud or intentional misrepresentation in securing or attempting to secure the issuance or renewal of a pharmacy technician or certified pharmacy technician license;
- (8) Allowing an individual to engage in the duties of a pharmacist, pharmacy technician or certified pharmacy technician without a license or to use falsely the title of pharmacist, pharmacy technician or certified pharmacy technician;
- (9) Being found by the Board to be in violation of any violation of any of the provisions of ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, 475.805 to 475.995 or 689.005 to 689.995 or the rules adopted pursuant thereto;
- (10) Failure to appropriately perform the duties of a pharmacy technician or certified pharmacy technician as outlined in OAR 855-025-0040 while assisting a pharmacist in the practice of pharmacy as defined in ORS 689.005;
- (11) Any act or practice relating to performing the duties of a pharmacy technician or certified pharmacy technician which is prohibited by state or federal law or regulation; or
- (12) Any conduct or practice by a pharmacy technician, certified pharmacy technician or pharmacy that the Board determines is contrary to the accepted standards of practice.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.151, Ch. 756 OL 2009

Hist.: BP 9-2005, f. 12-14-05, cert. ef. 12-15-05; BP 1-2006, f. & cert. ef. 6-9-06; BP 6-2010, f. & cert. ef. 6-29-10

855-044-0001

Purpose

The purpose of the program is to provide a process to make donated prescription drugs available to needy or uninsured individuals and those with limited access to pharmaceuticals. Under the rules in this Division, a Charitable Pharmacy that is registered with the Oregon Board of Pharmacy (Board) may accept donated drugs for distribution when the pharmacist can reasonably be assured of the purity and integrity of the drug. The program may not include categories of drugs specified by the Board as excluded from the program.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.772 & 689.774

Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-044-0005

Definitions

- (1) "Charitable Pharmacy" means a facility registered with the Oregon Board of Pharmacy for the purpose of receiving and distributing donated drugs.
- (2) "Point-of-Contact" means an individual designated by a charitable pharmacy who serves as the primary contact person for the charitable phar-

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macy and who is responsible for managing the charitable pharmacy at that location.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.772 & 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-044-0010

Registration

(1) A facility may not operate as a charitable pharmacy unless it is registered as such with the Board and has paid the fee specified in Division 110 of these rules.

(2) The application for registration must be on a form provided by the Board and must include proposed policies and procedures and a description of the organization.

(3) Each location must be registered separately.

(4) An applicant for registration as a charitable pharmacy must name a point-of-contact for each registered location.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-044-0020

Personnel

(1) A charitable pharmacy must have a licensed pharmacist. The pharmacist may also be the Point-of-Contact.

(2) A charitable pharmacy that is co-located with an existing registered pharmacy may name a pharmacist employed by the existing pharmacy as its pharmacist.

(3) A charitable pharmacy that is not co-located with an existing registered pharmacy and does not have a pharmacist on staff must employ a consultant pharmacist.

(4) The pharmacist must develop policies and procedures for:

- (a) Receiving donated drugs;
- (b) Security;
- (c) Drug storage;
- (d) Distribution of drugs;
- (e) Record keeping;
- (f) Disposal of unusable drugs; and
- (g) Staff training.

(5) The pharmacist must conduct a visual inspection of each donated drug to ensure that the drug has not expired, been adulterated or misbranded and is in its original, sealed packaging, and that based on this inspection and on the accuracy of the Donor's Form, the drug is safe to distribute.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-044-0030

Drug Donation

(1) A charitable pharmacy may not accept:

(a) Any controlled substance or any kit, package or blister pack that contains any controlled substance;

(b) A non-prescription drug;

(c) A drug in a container or package that does not contain a product identification label (PIL), except that a drug in a manufacturer's original container or a manufacturer's blister pack does not need to bear a PIL.

(2) A charitable pharmacy may accept:

(a) A prescription drug received in original, sealed, tamper-evident packaging that displays the lot number and expiration date of the drug; and

(b) Sealed single unit dose packages received in opened packages containing multiple single unit doses.

(3) The following are examples of acceptable packaging:

- (a) Manufacturer's original container;
- (b) Single-dose blister packs in sealed outer package;
- (c) Single-dose blister packs in opened outer package;
- (d) Tamper-evident hospice kit containing manufacturer's original containers.

(4) Donated drugs that do not meet the above criteria or are judged by the pharmacist to be unsafe for re-dispensing must be stored separately from the drug supply until they can be destroyed.

(5) A charitable pharmacy may accept a drug from:

- (a) An individual;
- (b) A long-term care facility;
- (c) A pharmacy;
- (d) A practitioner who has been given dispensing privileges by their licensing board and is acting within their scope of practice;
- (e) Another registered charitable pharmacy;
- (f) A medical clinic;

(g) A drug manufacturer or wholesaler;

(h) A Medication Assistance Program (MAP) such as those supported by drug manufacturers.

(6) The donor must certify on a Donor Form provided by the Board that the donated drug has been properly stored, in accordance with manufacturer's recommendations, and has never been opened, used, adulterated or misbranded.

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

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.772 & 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-044-0040

Storage and Security

(1) A charitable pharmacy must store all donated drugs securely and physically separate from any existing inventory.

(2) All charitable pharmacy records must be secured to comply with HIPAA and all state and federal regulations.

(3) Outdated and unusable drugs intended for destruction must be quarantined and stored securely.

(4) A charitable pharmacy co-located with an existing pharmacy must use storage and record keeping procedures that maintain separation of charitable pharmacy records and drugs from other pharmacy records and inventory.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-044-0050

Drug Distribution

(1) A charitable pharmacy may not distribute a donated prescription drug that:

- (a) Fails to meet the requirements of the program;
- (b) Has not been stored in accordance with manufacturer's recommendations;
- (c) Has been repackaged, except that a drug that has been repackaged for a long-term care pharmacy may be distributed;
- (d) Bears an expiration date that is less than nine months from the date the drug is donated;
- (e) Is adulterated or misbranded;
- (f) Is a controlled substance;
- (g) Is a drug that requires a special registration for dispensing;
- (h) Is an over-the-counter drug;
- (i) Requires specialty storage or handling;
- (j) Requires refrigeration;
- (k) Is a compounded drug; or
- (L) In the pharmacist's professional judgment, may be unfit for dispensing.

(2) A charitable pharmacy may only dispense a drug to a person who:

- (a) Has a valid prescription for the drug; and
- (b) Is a resident of Oregon; and
- (c) Is underinsured or does not have adequate health insurance coverage for the prescription drug requested; or
- (d) Is enrolled in a program of public assistance as defined in ORS 411.010;

(3) A drug may only be dispensed by a pharmacist or by a practitioner who has been given dispensing privileges by their licensing board and is acting within their scope of practice, or by a registered nurse subject to the following:

(a) A registered nurse who is an employee of a charitable pharmacy may dispense a drug to a client of the charitable pharmacy; and

(b) Such dispensing by a registered nurse shall be pursuant to the order of a person authorized to prescribe the drug.

(4) The dispensing practitioner must provide the patient with appropriate counseling on the use of the drug and any potential side effects, and may provide written drug information;

(5) A recipient of a drug under this program must sign a Recipient Form, provided by the Board, that attests that the recipient has been notified that:

- (a) The prescription drug was donated to the program;
- (b) A visual inspection was conducted by a pharmacist to ensure that the drug has not expired, been adulterated or misbranded, and is in its original, sealed packaging;

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(c) A pharmacist has determined that the drug is safe to distribute based on the accuracy of the Donor's Form and the visual inspection by the pharmacist;

(d) Participants in the program are immune from liability as provided in ORS 689.780; and

(e) That they are qualified to receive the drug as specified in section (2) of this rule.

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

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.772 & 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-044-0060

Labeling

(1) The label on a drug dispensed or distributed from a charitable pharmacy must meet all federal rules and laws and must contain:

- (a) The name, address and telephone number of the pharmacy;
 - (b) The name of the prescribing practitioner;
 - (c) The initials of the dispensing practitioner;
 - (d) Date dispensed;
 - (e) The name of the patient;
 - (f) Name and manufacturer of drug, drug strength, the quantity dispensed;
 - (g) Direction for use;
 - (i) The expiration date;
 - (j) A unique identifier; and
 - (k) Any further cautionary information required for patient safety.
- (2) All original patient identification must be removed.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-044-0070

Records

(1) A charitable pharmacy must maintain a donation record of all drugs received that includes:

- (a) Donor's name and address;
- (b) Drug manufacturer, lot number, name and strength;
- (c) Drug quantity;
- (d) Expiration date of the drug;
- (e) Date donated; and
- (f) The unique identifier.

(2) A charitable pharmacy must maintain a distribution and dispensing record that includes:

- (a) Drug name and strength;
- (b) Quantity distributed;
- (c) Name of manufacturer;
- (d) Lot number and expiration date;
- (e) Date of distribution or dispensing;
- (f) Name and address of recipient.

(3) A charitable pharmacy must maintain a record of all drugs that are destroyed.

(4) In addition to the above records, a charitable pharmacy must cross-reference the donation record and the distribution and dispensing record with the appropriate donor and recipient forms.

(5) A charitable pharmacy must make an annual report to the Board by completing a form provided by the Board and submitting it with their application for renewal of registration.

(6) All records required by these rules must be retained for three years and made available to the Board upon request.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-044-0080

Fees

(1) A charitable pharmacy may not charge a fee for accepting a donation.

(2) A charitable pharmacy may not sell a donated drug.

(3) A charitable pharmacy may charge a dispensing fee that does not exceed two and a half times Oregon's current Medicaid dispensing fee.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.772 & 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-044-0090

Liability

In accordance with ORS 689.780, a person who accepts or distributes donated prescription drugs through the charitable pharmacy program is not subject to criminal prosecution or civil liability for any injury, death or loss of or damage to person or property that results from the acceptance or distribution of the donated prescription drugs if the participant accepts or distributes the donated prescription drugs in good faith.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.774 & 689.780
Hist.: BP 6-2010, f. & cert. ef. 6-29-10

855-110-0005

Licensing Fees

(1) Pharmacist license examination (NAPLEX) and re-examination fee — \$50.

(2) Pharmacist jurisprudence (MPJE) re-examination fee — \$25.

(3) Pharmacist licensing by reciprocity fee — \$200.

(4) Pharmacist licensing by score transfer fee — \$200.

(5) Intern license fee. Expires November 30 every two years — \$30.

(6) Pharmacist:

(a) License fee. Expires June 30 annually — \$120. Delinquent renewal fee, (postmarked after May 31) — \$50.

(b) Electronic Prescription Monitoring Fund fee. Due by June 30 annually — \$25. (This is a mandatory fee, required by Chapter 799 Oregon Laws 2009 that must be paid with the pharmacist license renewal fee).

(c) Workforce Data Collection fee. Due by June 30 biennially — \$5. (This is a mandatory fee, required by Chapter 595 Oregon Laws 2009 that must be paid with the pharmacist license renewal fee every two years commencing 2011).

(7) Certification of approved provider of continuing education course fee, none at this time.

(8) Pharmacy Technician license fee. Expires September 30 annually — \$35. Delinquent renewal fee, (postmarked after August 31) — \$20.

(9) Certified Pharmacy Technician:

(a) License fee. Expires September 30 annually — \$35. Delinquent renewal fee, (postmarked after August 31) — \$20.

(b) Workforce Data Collection fee. Due by September 30 biennially — \$5. (This is a mandatory fee, required by Chapter 595 Oregon Laws 2009 that must be paid with the Certified Pharmacy Technician license renewal fee every two years commencing 2010).

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.135, OL 2009, Ch. 799 and 595
Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1980, f. 5-3-80, ef. 5-3-80 & 7-1-80; 1PB 2-1982, f. 3-8-82, ef. 4-1-82; 1PB 1-1984, f. & ef. 2-16-84; 1PB 3-1985, f. & ef. 12-2-85; 1PB 3-1988, f. & cert. ef. 5-23-88; 1PB 7-1989, f. & cert. ef. 5-1-89; 1PB 15-1989, f. & cert. ef. 12-26-89; 1PB 10-1990, f. & cert. ef. 12-5-90; 1PB 3-1991, f. & cert. ef. 9-19-91; 1PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); 1PB 4-1992, f. & cert. ef. 8-25-92; 1PB 1-1994, f. & cert. ef. 2-2-94; 1PB 1-1996, f. & cert. ef. 4-5-96; 1PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; 1PB 2-1998, f. & cert. ef. 3-23-98; 1PB 1-2001, f. & cert. ef. 3-5-01; 1PB 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; 1PB 1-2002, f. & cert. ef. 1-8-02; 1PB 1-2003, f. & cert. ef. 1-14-03; 1PB 1-2006, f. & cert. ef. 6-9-06; 1PB 5-2006(Temp), f. & cert. ef. 8-25-06 thru 1-20-07; 1PB 9-2006, f. & cert. ef. 12-19-06; 1PB 5-2009, f. & cert. ef. 12-24-09; 1PB 5-2010(Temp), f. 5-3-10, cert. ef. 5-4-10 thru 10-30-10; 1PB 6-2010, f. & cert. ef. 6-29-10

855-110-0007

Fees for Registration, Renewal, and Reinspection of Drug Outlets

(1) County Health Clinic (including family planning clinics). Expires March 31 annually — \$75. Delinquent renewal fee (postmarked after February 28) — \$25.

(2) Drug Distribution Agent. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(3) Drug Room (including correctional facility). Expires March 31 annually — \$75. Delinquent renewal fee (postmarked after February 28) — \$75.

(4) Manufacturer. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(5) Medical Device, Equipment & Gas Class C. Expires January 31 annually — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(6) Nonprescription Class A. Expires January 31 annually — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(7) Nonprescription Class B. Expires January 31 annually — \$25. Delinquent renewal fee (postmarked after December 31) --\$10.

(8) Nonprescription Class D. Expires January 31 annually — \$100. Delinquent renewal fee (postmarked after December 31) — \$25.

(9) Prophylactic and/or Contraceptive Wholesaler and/or Manufacturer — \$50. Expires December 31 annually.

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(10) Re-inspection fee — \$100. Applies to any re-inspection of a drug outlet occasioned to verify corrections of violations found in an initial inspection.

(11) Retail or Institutional Drug Outlet. Expires March 31 annually — \$175. Delinquent renewal fee (postmarked after February 28) — \$75.

(12) Veterinary Drug Outlet, Expires September 30 annually — \$00. Delinquent renewal fee (postmarked after August 31) — \$00.

(13) Wholesaler. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(14) Remote Dispensing Machine. Expires March 31 annually — \$100. Due by February 28 annually.

(15) Charitable Pharmacy. Expires March 31 annually — \$75. Delinquent renewal fee (postmarked after February 28) — \$25.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.135, 689.774

Hist.: PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 3-1998, f. & cert. ef. 3-23-98; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09; BP 6-2010, f. & cert. ef. 6-29-10

Rule Caption: Rules for agency participation in the Impaired Health Professional Program established by the Oregon Health Authority.

Adm. Order No.: BP 7-2010(Temp)

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 6-29-10 thru 12-24-10

Notice Publication Date:

Rules Adopted: 855-011-0005, 855-011-0020, 855-011-0030, 855-011-0040, 855-011-0050

Subject: The Health Professional's Service Program is the impaired health professional program established by the Oregon Health Authority pursuant to ORS 676.190. These rules provide a framework for the Board of Pharmacy's participation in the Program and establish a procedure for the Board to refer licensees to the program. The rules also specify a process for the Board to approve an independent evaluator and set requirements that must be met by participants.

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

855-011-0005

Definitions

When used in this division of rules:

(1) "Health Professional's Service Program (the Program)" means the impaired health professional program established by the Oregon Health Authority pursuant to authority granted by ORS 676.190.

(2) "Impaired" means that the licensee is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances or by reason of a mental health disorder.

(3) "Mental-health disorder" means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom that is identified in the DSM-IV-TR, (published by the American Psychiatric Association). "Mental-health disorder" includes gambling disorders.

(4) "Non-treatment compliance monitoring," means the non-medical, non-therapeutic services employed by the vendor to track and report the licensee's compliance with the monitoring agreement.

(5) "Substance Abuse Disorder" means a disorder related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include: substance abuse disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder, etc, as defined in DSM-IV-TR, (published by the American Psychiatric Association) criteria.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 676.200

Hist.: BP 7-2010(Temp), f. & cert. ef. 6-29-10 thru 12-24-10

855-011-0020

Participation in Health Professional's Service Program

(1) Effective July 1, 2010, the Oregon Board of Pharmacy (Board) will participate in the Program.

(2) The Board may only refer licensees of the Board to the Program if they meet the referral criteria established by the Board.

(3) The Board may refer a licensee to the Program in lieu of or in addition to public discipline.

(4) A licensee who has not been referred to the Program by the Board may participate in the Program as permitted by ORS 676.190(5). Licensees may not refer themselves to the Program unless they certify that, to the best of their knowledge, they are not currently under investigation by the Board.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 676.200

Hist.: BP 7-2010(Temp), f. & cert. ef. 6-29-10 thru 12-24-10

855-011-0030

Procedure to refer Board licensees to the Program

(1) When the Board has information that a licensee may be impaired by alcohol or a substance abuse disorder or dependency, or a mental-health disorder, the Board may consider referring the licensee to the Program.

(2) Before the Board refers a licensee to the Program, the Board shall:

(a) Obtain a copy of a written report that diagnoses the licensee with alcohol or a substance abuse disorder or dependency, or a mental-health disorder and provides treatment options;

(b) Investigate to determine whether the licensee's professional practice while impaired has presented or presents a danger to the public;

(c) Obtain the licensee's written agreement to report any arrest for or conviction of a misdemeanor or felony to the Board within three business days after the licensee is arrested or convicted;

(d) Obtain the licensee's written agreement to pay the costs of participation in the Program, including the cost of laboratory or toxicology tests, treatment, consultation group meetings and evaluations; and

(e) Obtain the licensee's written consent allowing disclosure and exchange of information between the Program, the Board, the monitoring entity, the licensee's employers, and evaluators and treatment entities.

(3) The report referred to in subsection (2)(a) of this rule must be prepared by an independent evaluator approved by the Board under OAR 855-011-0040 to evaluate alcohol or a substance abuse disorder or dependency, and mental-health disorders.

(4) The Board may only refer to the Program a licensee who has been diagnosed with alcohol or a substance abuse disorder or dependency, or a mental health disorder.

(5) The Board will consider all relevant factors before determining whether to refer a licensee to the Program. Relevant factors shall include but are not limited to:

(a) Licensee's disciplinary history;

(b) The severity and duration of the licensee's impairment;

(c) The extent to which licensee's practice can be limited or managed to eliminate danger to the public;

(d) The likelihood that licensee's impairment can be managed with treatment; and

(e) The likelihood that the licensee will follow the conditions of the program.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 676.200

Hist.: BP 7-2010(Temp), f. & cert. ef. 6-29-10 thru 12-24-10

855-011-0040

Approval by the Board of an Independent Evaluator

(1) The Board may approve a person to act as an evaluator provided that the person:

(a) Is licensed as required by the jurisdiction in which they work;

(b) Possesses a masters degree or a doctorate in a mental health discipline;

(c) Can document training and experience in one of the following:

(A) US Department of Transportation, Substance Abuse Professional Qualification training;

(B) Certification by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission as a Certified Alcohol and Drug Abuse Counselor (CADC) level II or III; or

(C) Board certification in Addiction Medicine by either the American Society of Addiction Medicine or American Board of Psychiatry and Neurology.

(d) Is able to provide a multi-disciplinary assessment and written report describing a licensee's diagnosis, degree of impairment and treatment options; and

(e) Certifies that, if required, they are willing to defend their evaluation in a court of law.

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(2) The Board may not approve an evaluator in a case if, in the Board's judgment, the evaluator's judgment is likely to be influenced by a personal or professional relationship with a licensee.

(3) The Board shall maintain a list of approved independent evaluators on the Board's website or the Board may approve a list of evaluators that meet the above criteria that is approved and published by the Program contractor.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 676.200
Hist.: BP 7-2010(Temp), f. & cert. ef. 6-29-10 thru 12-24-10

855-011-0050

Additional requirements for licensees referred to the Program

(1) In addition to the requirements established by ORS 676.185 to 676.200, a licensee who participates in the Program must:

(a) Participate in the Program for as long as specified in the disciplinary order but not less than two years, except that a licensee who has been enrolled in a prior Board approved program for at least two years may count up to one year of that program towards this requirement;

(b) Meet all conditions of probation specified in the disciplinary order; and

(c) Pay all costs of attendance at non-treatment compliance monitoring group meetings.

(2) A licensee may petition the Board for early removal from the Program if:

- (a) They are in good standing with the Program;
- (b) They have been in the Program for at least two years; and
- (c) They have complied with all conditions of their Board disciplinary order.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 676.200
Hist.: BP 7-2010(Temp), f. & cert. ef. 6-29-10 thru 12-24-10

Rule Caption: Reschedule methamphetamine in Controlled Substance Schedule I and marijuana in Controlled Substance Schedule II.

Adm. Order No.: BP 8-2010

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Certified to be Effective: 6-29-10

Notice Publication Date: 5-1-2010

Rules Amended: 855-080-0020, 855-080-0021, 855-080-0022, 855-080-0028, 855-080-0055, 855-080-0085, 855-080-0105

Subject: ORS 475.059 requires the Board to reschedule marijuana from Controlled Substance Schedule I to Schedule II, III, IV or V. In accordance with ORS 475.035, the Board has reviewed a spectrum of the scientific knowledge available regarding marijuana with specific reference to its pharmacological effects, the patterns of use and misuse, and the potential consequences of abuse. The Board reviewed an extensive collection of scientific and sociological material relating to marijuana, as well as comments from members of the public, some of whom have extensive training and experience with marijuana. The Board decided that Schedule II is the most appropriate schedule. Under ORS 475.065, the Board is also required to reschedule methamphetamine, except for accepted medical use, as a Schedule I drug. The other amendments correct errors and update rules in accordance with changes in federal regulations.

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

855-080-0020

Schedules

Pursuant to ORS 475.005(6) those drugs and their immediate precursors classified in Schedules I through V under the Federal Controlled Substances Act, 21 U.S.C. Sections 811 to 812 and as amended by the Board pursuant to ORS 475.035 are the controlled substances for purposes of regulation and control under the Act. Those schedules are set out in OAR 855-080-0021 through 855-080-0026.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 475.035
Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; 1PB 2-1984, f. & ef. 3-7-84; 1PB 4-1984(Temp), f. & ef. 9-17-84; 1PB 1-1985, f. & ef. 2-27-85; 1PB 2-1985, f. & ef. 7-24-85; 1PB 4-1985, f. & ef. 12-2-85; 1PB 2-1986, f. & ef. 7-10-86; 1PB 4-1987, f. & ef. 3-30-87; 1PB 5-1991, f. & cert. ef. 9-19-91; BP 8-2010, f. & cert. ef. 6-29-10

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 21 CFR 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) Benzylfentanyl;
- (b) Thenylfentanyl;
- (c) N-Benzylpiperazine (BZP);
- (d) 1,4-butanediol.
- (e) Methamphetamine, except as listed in OAR 855-080-0022.

(2) 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.

(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.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 475.035, 475.059, 475.065 & 475.940
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. 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

855-080-0022

Schedule II

Schedule II consists of the drugs and other substances by whatever official, common, usual, chemical, or brand name designated, listed in 21 CFR part 1308.12 and any quantity of the following substances:

- (1) Marijuana;
- (2) Methamphetamine, when in the form of an FDA approved product containing methamphetamine, its salts, isomers and salts of its isomers as an active ingredient for the purposes of currently accepted medical use.

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 3-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 4-2000, f. & cert. ef. 2-16-00; BP 4-2006, f. & cert. ef. 7-1-06; BP 1-2007, f. & cert. ef. 6-29-07; BP 8-2010, f. & cert. ef. 6-29-10

855-080-0028

Excluded Substances

The following drugs and their generic equivalents are excepted from the schedules in OAR 855-080-0021 through 855-080-0026:

- (1) Benzedrex inhaler (Propylhexedrine).
- (2) Vicks — Vapor inhaler (Levmetamfetamine).

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; 1PB 4-1987, f. & ef. 3-30-87; Renumbered from 855-080-0025; PB 5-1991, f. & cert. ef. 9-19-91; PB 1-1995, f. & cert. ef. 4-27-95; BP 4-2006, f. & cert. ef. 7-1-06; BP 6-2006(Temp), f. & cert. ef. 8-25-06 thru 1-31-07; BP 8-2006, f. & cert. ef. 12-19-06; BP 8-2010, f. & cert. ef. 6-29-10

855-080-0055

Separate Registration for Independent Activities

The manufacturing and distributing of controlled substances are deemed activities independent of each other. A separate registration is required for each activity; however, a person registered to manufacture may distribute or dispense any controlled substance which they are registered to manufacture, provided that, unless specifically exempted, they comply with all requirements and duties prescribed by statute and rules for persons registered to distribute or dispense as applicable.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 475.125, 689.155
Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; BP 8-2010, f. & cert. ef. 6-29-10

ADMINISTRATIVE RULES

855-080-0085

Prescription Requirements

(1) Except as provided in sections (2) and (3) of this rule, the provisions of 21 CFR 1306.01 through 1306.27 and 1304.03(d) shall be complied with by the registrants, practitioners and pharmacists as specified therein in the issuance, preparation, labeling dispensing, recordkeeping and filing of prescriptions for controlled substances. An electronic prescription is permitted for any substance listed in OAR 855-080-0022 through 855-080-0026 when so permitted by federal regulations.

(2) The provisions of 21 CFR 1306.11(a) under section (1) of this rule are amended by deleting "which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act."

(3) The provisions of 21 CFR 1306.21 through 1306.27 under section (1) of this rule shall be deemed to apply also to controlled substances listed in Schedule V.

(4) Controlled substances in Schedules III, IV, and V which are prescription drugs determined by the Board pursuant to ORS 475.185(3) are those prescription drugs as determined under the Federal Food, Drug, and Cosmetic Act. Such drugs are "Legend Drugs" and bear the legend "Caution: Federal law prohibits dispensing without a prescription", or an equivalent legend. In addition, any preparation containing any amount of codeine or its salts, opium, or paregoric in Schedules III, IV, or V is a prescription drug as determined by the Board pursuant to ORS 475.185(3).

(5) "Emergency Situations" as referred to in ORS 475.185(2) mean the same as specified in 21 CFR 290.10.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 475.185, 475.188

Hist.: 1PB 6-1978(Temp), f. & ef. 7-1-78; 1PB 8-1978, f. & ef. 10-17-78; 1PB 6-1982, f. & ef. 8-6-82; PB 15-1989, f. & cert. ef. 12-26-89; PB 5-1991, f. & cert. ef. 9-19-91; BP 1-2007, f. & cert. ef. 6-29-07; BP 8-2010, f. & cert. ef. 6-29-10

855-080-0105

Disposal of Drugs

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

(2) Controlled substances which are expired, deteriorated or unwanted shall be disposed of in conformance with **21 CFR 1307.21**.

(3) Expired, deteriorated, discontinued, or unwanted controlled substances in a long-term care facility shall be destroyed and the destruction jointly witnessed on the premises by any two of the following:

- The consultant pharmacist or registered nurse designee.
- The Director of Nursing Services or supervising nurse designee
- The administrator of the facility or an administrative designee
- A Registered Nurse employed by the facility

(4) The destruction shall be documented and signed by the witnesses and the document retained at the facility for a period of at least three years. Copies of the document shall be sent to the consultant pharmacist. Any destruction of controlled substances deviating from this procedure must be approved by the Board prior to implementation.

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

Stat. Auth.: ORS 475.035 & 689.205

Stats. Implemented: ORS 689.305

Hist.: 1PB 2-1984, f. & ef. 3-7-84; PB 1-1989, f. & cert. ef. 1-3-89; PB 1-1990, f. & cert. ef. 1-23-90; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 1-1996, f. & cert. ef. 4-5-96; BP 4-2006, f. 6-9-06, cert. ef. 7-1-06; BP 8-2010, f. & cert. ef. 6-29-10

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Rule Caption: Establishes application procedures for remotely supervised pharmacy facilities.

Adm. Order No.: BP 9-2010(Temp)

Filed with Sec. of State: 7-9-2010

Certified to be Effective: 7-9-10 thru 12-24-10

Notice Publication Date:

Rules Adopted: 855-041-0640

Rules Amended: 855-041-0600

Subject: This rule establishes a procedure and criteria that a pharmacy must follow if it wishes to apply to operate a satellite facility where remote supervision from the parent pharmacy would be accomplished using audio-visual technology.

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

855-041-0600

Definitions

(1) "Automated Pharmacy System" (APS) means a mechanical system that performs operations or activities, including but not limited to, those related to the storage, packaging, dispensing, or distribution of medications, but not including compounding or administration, and that collects, controls, and maintains all transaction information.

(2) "Remote Dispensing Facility" (RDF) means a facility where drugs are prepared for administration and where requisite pharmacist supervision is provided remotely as approved by the Board.

(3) "Remote Dispensing Machine" (RDM) means a component of an Automated Pharmacy System that contains prepackaged drugs for dispensing.

(4) "Responsible Pharmacy" means the licensed pharmacy that is responsible for the APS, and RDM.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2005, f. 2-14-05, cert. ef. 3-1-05; BP 9-2010(Temp), f. & cert. ef. 7-9-10 thru 12-24-10

855-041-0640

Remote Dispensing Facility (RDF)

(1) A pharmacy physically located in Oregon may make written application to operate an RDF.

(2) At its discretion, the Board may approve an application for registration as an RDF, which includes the following:

- An operation plan;
- Policies and Procedures;
- A training plan;

(d) A quality assurance plan for ensuring that there is a planned and systematic process for the monitoring and evaluation of the quality and appropriateness of pharmacy services and for identifying and resolving problems; and

(e) The fee specified in OAR 855-110-0007(14).

(3) Notwithstanding the definition of "supervision by a pharmacist" in OAR 855-006-0005, supervision in an RDF may be accomplished by a pharmacist via an audio-visual technology from the applying pharmacy.

(4) Notwithstanding rules in this division and in division 019, a Certified Pharmacy Technician who works in an RDF may have access to the facility without the physical presence of a pharmacist, but may only perform Board approved functions when under the supervision of a pharmacist.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 9-2010(Temp), f. & cert. ef. 7-9-10 thru 12-24-10

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Bureau of Labor and Industries

Chapter 839

Rule Caption: Amends the prevailing rates of wage for the period beginning April 1, 2010.

Adm. Order No.: BLI 17-2010

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 7-1-10

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning April 1, 2010.

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2010, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2010, and the effective dates of the applicable special wage determination and rates amendments:

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon and Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2010, are available from any office of the Wage and Hour Division of the

ADMINISTRATIVE RULES

Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002, f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. ef. & 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09; BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09; BLI 29-2009, f. 12-31-09, cert. ef. 1-1-10; BLI 1-2010, f. 1-8-10, cert. ef. 1-12-10; BLI 2-2010, f. 1-11-10, cert. ef. 1-13-10; BLI 3-2010, f. & cert. ef. 1-19-10; BLI 4-2010, f. & cert. ef. 1-27-10; BLI 13-2010, f. & cert. ef. 4-1-10; BLI 17-2010, f. 6-29-10, cert. ef. 7-1-10

Construction Contractors Board Chapter 812

Rule Caption: Amends: refunds/NSF checks, definitions: complaint and substantial completion, attorney fees, correct cite references, shorten time, exception forms.

Adm. Order No.: CCB 12-2010

Filed with Sec. of State: 6-24-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 812-001-0180, 812-002-0140, 812-002-0740, 812-004-0250, 812-004-0320, 812-004-0400, 812-004-0550, 812-009-0430

Subject: • 812-001-0180 is amended to delete the requirement that CCB only refunds overpayments: 1) when requested to do so; and 2) within three years of the overpayment. In addition, CCB proposes to eliminate the \$20 "threshold" in the rule below which it made no refunds. These amendments comply with Oregon law and simplify CCB's bookkeeping.

• 812-002-0140 is amended to clarify the definition of a construction lien complaint in section (1). The amendment clarifies that

the CCB dispute resolution process does not include a lien filed by the prime against the owner.

• 812-0020740 is amended to clarify the definition of substantial completion and provide specific application of the rule for fact situations that frequently arise in complaints.

• 812-004-0250 is amended to allow CCB to order respondent to pay complainant's attorney fees, costs, interest and other fees anytime the agency orders complainant to file the complaint in court. Under existing law, we can only do this if we send the complainant to court because of the nature or complexity of the case. But there are a few cases where we require complainant to file in court where nature or complexity is not an issue. One is where the construction contract requires that the dispute be resolved in court. The complainant in these cases should be allowed to recover attorney fees and other costs.

• 812-004-0320 is amended to correct the cite reference conform section (4)(a)(B) to ORS 701.131(2)(c)(B) regarding who may file a complaint.

• 812-004-0400 is amended to shorten the time for payment of the complaint processing fee from 60 days to 30 days. The Board's streamlining program proposed reducing the time CCB allows a complainant to send in the processing fee.

• 812-004-0550 is amended to correct the cite references.

• 812-009-0430 is amended to require that the agency may provide forms to be used in filing exceptions and require the use of those forms.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-001-0180

Refunds; NSF Check Charge

(1) The agency shall refund a fee or civil penalty paid to it in excess of the amount legally due if the agency, within three years of the date of payment, determines that it received excessive payment.

(2) After three years, the agency may refund a fee or civil penalty paid to it in excess of the amount legally due, if requested to do so by the person who made the excessive payment.

(3) If the agency receives payment of any fees or penalty by check and the check is returned to the agency as an NSF check, the payer of the fees will be assessed an NSF charge of \$25 in addition to the required payment of the fees or penalty.

Stat. Auth.: ORS 293.445, 670, 310 & 701.235

Stats. Implemented: ORS 293.445 & 701

Hist.: CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 12-2010, f. 6-24-10, cert. ef. 7-1-10

812-002-0140

Complaint

"Complaint," as used in OAR chapter 812, means a complaint filed and processed under ORS 701.131–701.180. Complaints are classified by type as follows:

(1) "Construction lien complaint" is a complaint filed by an owner against a primary contractor to discharge or to recoup funds expended in discharging a construction lien filed by an employee, supplier or subcontractor because the primary contractor did not pay the employee, supplier or subcontractor.

(2) "Employee complaint" is a complaint for unpaid wages or benefits filed by an employee of a licensee or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a licensee for work done by the employee relating to the licensee's operation as a contractor under ORS Chapter 701.

(3) "Employee trust complaint" is a complaint for unpaid payments for employee benefits filed by a trustee with authority to manage and control a fund that receives the employee benefit payments.

(4) "Material complaint" is a complaint filed by a supplier who has not been paid for materials sold to a licensee to be used and installed in a specific structure located within the boundaries of the State of Oregon, or for the rental of equipment to a licensee to be used in the performance of the work of a contractor in connection with such a structure.

(5) "Owner complaint" is a complaint filed by an owner for breach of contract, or for negligent or improper work subject to ORS Chapter 701, or a construction lien complaint.

(6) "Primary contractor complaint" is a complaint by a primary contractor against a licensed subcontractor.

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(7) "Subcontractor complaint" is a complaint filed by a subcontractor arising out of a contract between the subcontractor and a primary contractor for unpaid labor or materials furnished under the contract.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 87.058, 87.093 & Ch. 701

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; 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 12-2010, f. 6-24-10, cert. ef. 7-1-10

812-002-0740

Substantial Completion

(1) For purposes of ORS 701.143, "Substantial completion" occurs when a person in the position of the owner would reasonably conclude that the contractor had fulfilled its obligations under the contract and that final payment was due.

(2) In the absence of evidence to the contrary, the agency may find that substantial completion occurred at the time of the first occurring of any of the following events: final inspection is completed, certificate of occupancy is issued, the structure or portion of structure is in a habitable or usable condition, or most or all of payment is made if all of the payment was not advanced before work was complete.

(3) Work under a warranty provision of a contract or repair to already completed work does not extend the date of substantial completion, except that removal and replacement of completed work may extend the date of substantial completion to the date the replacement work was substantially complete for purposes of a complaint arising from the replacement work only.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.143

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 12-2010, f. 6-24-10, cert. ef. 7-1-10

812-004-0250

Award of Complaint-Processing Fee, Attorney Fees, Interest and Other Costs

(1) Except as provided in section (2) of this rule and subject to OAR 812-010-0420, an order or arbitration award of the board awarding monetary damages in a complaint that are payable from respondent's bond, letter of credit or cash deposit required under ORS 701.085 (2005), 701.068 or 701.088, including, but not limited to an order of the board arising from a judgment, award or decision by a court, arbitrator or other entity may not include an award for:

- (a) Attorney fees;
- (b) Court costs;
- (c) Interest;
- (d) Costs to pursue litigation or the complaint;
- (e) Service charges or fees; or
- (f) Other damages not directly related to negligent or improper work under the contract or breach of the contract that is the basis of the complaint.

(2) An order or arbitration award by the board awarding monetary damages that are payable from respondent's bond, letter of credit or cash deposit required under ORS 701.085 (2005), 701.068 or 701.088 may include an award for attorney fees, costs, interest or other costs as follows:

(a) An order in a construction lien complaint may include attorney fees, court costs, interest and service charges allowed under OAR 812-004-0530(5).

(b) An order or arbitration award in an owner complaint may include interest expressly allowed as damages under a contract that is the basis of the complaint.

(c) An order or arbitration award awarding monetary damages or issued under OAR 812-004-0540(6) may include an award of a complaint processing fee paid by the complainant under OAR 812-004-0110.

(d) An order or arbitration award may include attorney fees, court costs, other costs and interest included in an order or award of a court, arbitrator or other entity that are related to the portion of the order or award of the court, arbitrator or other entity that is within the jurisdiction of the board if the order or award of the court, arbitrator or other entity arises from litigation, arbitration or other proceedings authorized by law or the parties to effect a resolution to the dispute:

- (A) That was initiated by the respondent; or
- (B) That the agency required the complainant to initiate under ORS 701.145.

(3) This rule does not apply to a complaint filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.068, 701.088, 701.145, 701.146

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; 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 12-2010, f. 6-24-10, cert. ef. 7-1-10

812-004-0320

Jurisdictional Requirements

(1) A complaint must be of a type described under ORS 701.140.

(2) A complaint must be filed with the agency within the time allowed under ORS 701.143.

(3) A complaint will be processed only against a licensed entity. Whether a respondent is licensed for purposes of this section must be determined as follows:

(a) For an owner, primary contractor or subcontractor complaint, the respondent will be considered licensed if the respondent was licensed during all or part of the work period.

(b) For a material complaint, the respondent will be considered licensed if one or more invoices involve material delivered while the respondent was licensed. Damages will be awarded only for material delivered within the period of time that the respondent was licensed.

(c) For an employee or employee trust complaint, the respondent will be considered licensed if the respondent was licensed on one or more days that the complainant or the employee that is the subject of the trust performed work that was not paid for. Damages will be awarded only for unpaid wages or benefits provided on days on which the respondent was licensed.

(4)(a) The complainant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the complaint requires that the complainant be licensed under ORS 701.026 in order to perform the work; and

(B) The complaint does not arise from defects, deficiencies or inadequate performance of construction work.

(b) As used in section (4) of this rule, "properly licensed" means the complainant:

(A) Had a current valid license issued by the agency and was not on inactive status;

(B) Was licensed for the type of work at issue in the complaint;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-0250 as they applied to the complainant's license status as an "exempt" or "nonexempt" contractor; and

(D) Complied with any other requirements and restrictions on the complainant's license.

(5) Complaints will be accepted only when one or more of the following relationships exist between the complainant and the respondent:

(a) A direct contractual relationship based on a contract entered into by the complainant and the respondent, or their agents;

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim;

(c) A contract between the complainant and the respondent providing that the complainant is a trustee authorized to receive employee benefit payments from the respondent for employees of the respondent; or

(d) A real estate purchase conditioned upon repairs made by the respondent.

(6) Complaints will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7) The agency may refuse to process a complaint or any portion of a complaint that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a complaint previously filed by the same complainant against the same respondent, except that the agency may process a complaint that would otherwise be dismissed under this section (7) if the previously filed complaint was:

(a) Withdrawn before the on-site meeting;

(b) Closed without a determination on the merits before the on-site meeting;

(c) Closed because the complainant failed to pay the complaint processing fee required under OAR 812-004-0110.

(d) Closed or dismissed with an explicit provision allowing the subsequent filing of a complaint containing the same allegations as the closed or dismissed complaint; or

(e) Closed or withdrawn because the respondent filed bankruptcy.

ADMINISTRATIVE RULES

(8) Nothing in section (7) of this rule extends the time limitation for filing a complaint under ORS 701.143.

(9) A complaint by a person furnishing material, or renting or supplying equipment to a contractor may not include a complaint for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Complaints by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least \$150 in amount, not including the processing fee required by 812-004-0110.

(11) The agency may process a complaint against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.131, 701.133, 701.139, 701.140, 701.143, 701.145 & 701.146
Hist.: 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 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 7-2009, f. 11-30-09, cert. ef. 1-1-10; CCB 12-2010, f. 6-24-10, cert. ef. 7-1-10

812-004-0400

Initial Administrative Processing of Complaints; Collection of Fee

(1) Upon receipt of a complaint, the agency must:

(a) Send a copy of the complaint to the respondent;

(b) Verify that the complainant has provided information required under OAR 812-004-0340 and request additional information from the complainant if necessary;

(c) Make a preliminary determination that the board has or lacks jurisdiction over the complaint based on the information provided by the complainant;

(d) If the agency makes a preliminary determination that it has jurisdiction over the complaint and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee. Except as provided in section (2) of this rule, the agency may suspend processing of the complaint until complainant pays this fee.

(e) If the agency determines that the complaint should be dismissed based on the information submitted by complainant, the agency must issue a proposed order to dismiss under OAR 812-004-0550. If the complainant requests a hearing on the dismissal and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee and may not transmit the complaint to the Office of Administrative Hearings for a hearing until the fee is paid.

(f) If the complainant does not pay the fee required under OAR 812-004-0110 within 30 days of written notification that the fee is due, the agency may close the complaint. The request for payment and closure must comply with OAR 812-004-0260. The agency may extend the time for payment of the fee upon a showing of good cause by the complainant.

(2) The agency may initiate an investigation to determine the validity of the complaint. The investigation may include an investigation conducted at an on-site meeting. At the agency's discretion, the agency may investigate a complaint even though the fee required under OAR 812-004-0110 has not been paid if the agency believes the public will benefit from continuing to investigate the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.133, 701.140, 701.145, 701.146
Hist.: 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 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 12-2010, f. 6-24-10, cert. ef. 7-1-10

812-004-0550

Proposed Default Order to Dismiss, Other Resolution of Complaint by Proposed Default Order

(1) The agency may issue a proposed default order proposing dismissal of a complaint if the evidence in the complaint record persuades the agency that one of the following grounds for dismissal exists:

(a) The complaint is not the type of complaint that the agency has jurisdiction to determine under ORS 701.140.

(b) The complaint was not filed within the time limit specified under ORS 701.143.

(c) The complainant did not permit the respondent to comply with agency recommendations under ORS 701.145(3)(d).

(d) The complaint must be dismissed for lack of jurisdiction under OAR 812-004-0320(4) or (5).

(e) The respondent breached a contract or performed work negligently or improperly, but the monetary value of damages sustained by the complainant is less than an amount due to the respondent from the complainant under the terms of the contract.

(f) The complainant contends that the respondent did not fulfill the terms of a settlement that resolved the complaint but the agency finds that the respondent fulfilled the respondent's obligation under the settlement agreement.

(2) The agency may issue a proposed default order proposing dismissal of a complaint if the agency investigates the complaint and finds that the record of the complaint supports dismissal under OAR 812-004-0535.

(3) If the complainant makes a timely request for a hearing after the agency issued a proposed default order under section (1) or (2) of this rule, the agency may:

(a) Refer the complaint for an arbitration or contested case hearing solely to determine whether the dismissal was proper; or

(b) Require that the complainant file a statement of damages stating an amount the complainant alleges the respondent owes the complainant and refer the complaint for arbitration or a contested case hearing to determine if the complaint should be dismissed and if not, the validity of the complaint and whether the amount alleged, or some lesser amount is proper.

(4) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.133 & 701.145
Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; 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 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 10-2008, f. 6-30-08, cert. ef. 7-1-08; CCB 12-2010, f. 6-24-10, cert. ef. 7-1-10

812-009-0430

Form of Exceptions to Agency Order in a Complaint

(1) Exceptions to an agency order filed by a party to a complaint under OAR 812-009-0400 or a respondent under 812-009-0420 must conform to the following requirements:

(a) Exceptions must be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the exceptions must be titled "Exceptions to Proposed Order." If the exceptions are filed in a complaint, the first page must show the file number, the names of the parties to the complaint and the party submitting the exceptions at the top of the page. If the exceptions are filed in an enforcement action, the first page must show the name of the respondent at the top of the page.

(c) Each page of the exceptions must be numbered at the bottom of the page.

(d) For each finding of fact in the proposed order that the party alleges is not supported by the evidence in the record the following information must be included in the exceptions:

(A) The pages on which the finding of fact appear and the number, if any, of the finding of fact;

(B) The text of the finding of fact; and

(C) An explanation or argument supporting the party's contention that the finding of fact is not supported by the evidence in the record.

(e) For each conclusion in the proposed order that the party alleges is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision the following information must be included in the exceptions:

(A) The pages on which the conclusion and the opinion that supports it appear;

(B) The text of the conclusion; and

(C) An explanation or argument supporting the party's contention that the conclusion is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision.

(f) For each procedural error committed by the administrative law judge that the party contends directly affected the decision in the proposed order in a manner prejudicial to the party the following information must be included in the exceptions:

(A) A description of the procedural error; and

(B) An explanation or argument supporting the party's contention that the procedural error affected the decision and was prejudicial to the party filing the exceptions.

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(g) If the party intends to rely on oral testimony at the hearing, a notification that the party intends to rely on oral testimony must be included in the exceptions.

(h) The party submitting the exceptions must sign and date the exceptions.

(2) If the agency provides forms to a party that comply with the requirements of section (1) of this rule, the agency may require that the party use the forms provided or forms that substantially match the forms provided if the party submits exceptions.

(3) The Appeal Committee may refuse to consider exceptions that do not substantially meet the requirements of sections (1) and (2) of this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stat. Implemented: ORS 183, 701.145 & 701.260

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07; CCB 9-2008, f. 6-11-08, cert. ef. 7-1-08; CCB 12-2010, f. 6-24-10, cert. ef. 7-1-10

Rule Caption: Adopt Locksmith Certification Program Enforcement.

Adm. Order No.: CCB 13-2010(Temp)

Filed with Sec. of State: 7-7-2010

Certified to be Effective: 7-7-10 thru 1-2-11

Notice Publication Date:

Rules Amended: 812-005-0800

Subject: 812-005-0800 is amended to set forth the sanctions for violating the locksmith statutes and rules. These rules implement the provisions of ORS 701.475-701.490 (HB 3127, Oregon Laws 2009, chapter 781), regarding certification of locksmiths, enforcement of which becomes effective July 1, 2010. CCB certifies individuals who advertise or work as a locksmith. The individual must pass a test demonstrating competency. A business that offers locksmith services must be a licensed contractor and employ certified locksmiths. The certified locksmith must comply with the standards of professional conduct (OAR 812-030-0300).

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

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 701.026 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 701.026 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 701.026 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) \$5,000 per offense for performing work as a contractor in violation of ORS 701.026, 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.

(a) 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 701.026, 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 an unlicensed subcontractor; and

(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: 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 OAR 812-003-0320: First offense warning, second offense \$50, 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(4), 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 (13) 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, 701.035, 701.046 or 701.091, as authorized by ORS 701.106, \$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(3), \$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)(k) 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)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the

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public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(23) When, as set forth in ORS 701.098(1)(g), 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 ORS 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)-(8): \$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 812-008-0201(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)(e), 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.

(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 183.310-183.500, 670.310, 701.235, 701.515, 701.992 & 701.995

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 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, 701.510, 701.515, 701.992 & 701.995

Hist.: 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 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 RULES

Department of Administrative Services Chapter 125

Rule Caption: Allow state employees to conduct external reviews of other agency internal audit functions.

Adm. Order No.: DAS 1-2010(Temp)

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 6-29-10 thru 12-26-10

Notice Publication Date:

Rules Amended: 125-700-0015, 125-700-0055

Subject: Originally, the Administrative Rule required state agency internal audit functions to procure an external party to perform a peer review, required to maintain compliance with professional auditing standards and the OAR. This modification will allow the state to incorporate a "swap" program (an industry common practice) where internal auditors from other agencies can provide these reviews of compliance with professional auditing standards across agencies with general oversight from the Department of Administrative Services.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

125-700-0015

Definitions

(1) Audit: The examination of documents, records, reports, systems of internal control, accounting and financial procedures, and other evidence for one or more of the following purposes:

(a) To ascertain whether the financial statements present fairly the financial position and the results of financial operations of the fund types and account groups in accordance with Generally Accepted Accounting Principles and federal and state rules and regulations;

(b) To determine compliance with applicable laws, rules, regulations and contract provisions;

(c) To review the efficiency and economy with which operations are carried out; and

(d) To review effectiveness in achieving results.

(2) Chief Audit Executive: An employee designated by the agency to manage the internal audit function.

(3) External Review: A review conducted by an outside provider or a team of qualified auditors to determine compliance with Professional Auditing Standards.

(4) Internal audit function: Staff employed or contractors hired to conduct audits and risk assessments in accordance with professional auditing standards within a state agency.

(5) Internal Auditing: Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management control, and governance processes.

(6) Professional Auditing Standards: Standards for internal audits that are consistent with and incorporate commonly recognized industry standards and practices.

(7) Risk: The possibility that an event will occur and adversely effect the achievement of objectives. Risk is measured in terms of impact (the effect) and probability (the likelihood the event will occur).

(8) Risk Assessment: A process of identifying, analyzing and prioritizing risks to activities of an agency.

(9) Risk Management: A process to identify, assess, manage, and control potential events or situations, to provide reasonable assurance regarding the achievement of the organization's objectives.

Stat. Auth.: ORS 184.360

Stats. Implemented:

Hist.: DAS 1-2006, f. & cert. ef. 1-30-06; DAS 1-2010(Temp), f. & cert. ef. 6-29-10 thru 12-26-10

125-700-0055

External Peer Review

(1) State internal audit functions must have an external review to determine whether the function is operating in accordance with professional auditing standards. This review must result in an issued report.

(2) A copy of the external review report will be provided to the Internal Audit Section of the Oregon Department of Administrative Services with the internal audit function's annual report.

(3) State internal audit functions may have the review performed by an external provider, or may participate in a coordinated effort through the Department of Administrative Services to have a review performed by internal audit staff from other state agencies.

(a) Reviews performed under this coordinated effort must be performed by at least two auditors, and led by an auditor with formal training or experience performing external reviews.

(b) State internal audit functions who choose to participate in the coordinated effort must also volunteer time to perform reviews at other agencies.

Stat. Auth.: ORS 184.360

Stats. Implemented:

Hist.: DAS 1-2006, f. & cert. ef. 1-30-06; DAS 1-2010(Temp), f. & cert. ef. 6-29-10 thru 12-26-10

Department of Administrative Services, Budget and Management Division Chapter 122

Rule Caption: The rule allows allotments to be reduced for the remainder of the 2009–11 biennium.

Adm. Order No.: BMD 1-2010(Temp)

Filed with Sec. of State: 6-22-2010

Certified to be Effective: 6-22-10 thru 12-18-10

Notice Publication Date:

Rules Adopted: 122-060-0030

Subject: The Department of Administrative Services (Department) has determined that probably receipts from taxes and other revenue sources for the 2009–11 General Fund appropriations will be less than anticipated by the Legislative Assembly when it enacted the state's budget for the 2009–11 biennium and made adjustments to that budget in the special session held during the 2010 calendar year. Consequently, the amount of General Fund revenue available for appropriations for the remainder of the 2009–11 biennium will be less than the amounts estimated or allotted therefore. Pursuant to ORS 291.261, acting on this determination and with the Governor's approval, and following notice to the agencies affected, the Department is reducing the allotment amounts for the remainder of the 2009–11 biennium to balance the state's budget and prevent state government from incurring a deficit in violation of Article XI, Section 7, of the Oregon Constitution.

Rules Coordinator: Yvonne Hanna—(503) 378-2349, ext. 325

122-060-0030

Allotment Reductions to Balance Budget and Prevent Deficit

(1)(a) The Department of Administrative Services (Department) has determined that probable receipts from taxes and other revenue sources for the 2009-11 General Fund appropriations will be less than anticipated by the Legislative Assembly when it enacted the state's budget for the 2009-11 biennium and made adjustments to that budget in the special session held during the 2010 calendar year. Consequently, the amount of General Fund revenue available for appropriations for the remainder of the 2009-11 biennium will be less than the amounts estimated or allotted therefore. Pursuant to ORS 291.261, acting on this determination and with the Governor's approval, and following notice to the agencies affected, the Department is reducing allotment amounts for the remainder of the 2009-11 biennium to balance the state's budget and prevent state government from incurring a deficit in violation of Article XI, Section 7, of the Oregon Constitution.

(b) The reductions in moneys allotted specified in Section 2 of this rule take effect on the date on which the Department files the rule with the Archives Division, Secretary of State.

(c) If one or more individual allotment reductions made under Section 2 of this rule is for any reason held to be invalid or unlawful, the remaining reductions shall not be affected but shall remain in full force and effect in accordance with the terms of this rule, and to this end the reductions made by this rule are severable.

(2) Moneys allotted for the final four quarters of the 2009-11 biennium are reduced by 4.6282 percent.

(3) On a schedule to be established by the Department, each agency for which allotments are reduced under this rule must submit to the Department estimates for the remaining allotment periods of the 2009-11 biennium that are consistent with the reductions.

(4) Notwithstanding section 2 above, the Department shall make no reductions in moneys allotted for payment on debt obligations incurred by the state prior to the effective date of this rule.

Stat. Auth.: ORS 183.335(5); 184.340; 291.232–291.261

Stats Implemented: ORS 291.261

Hist.: BMD 1-2010(Temp), f. & cert. ef. 6-22-10 thru 12-18-10

ADMINISTRATIVE RULES

Department of Agriculture Chapter 603

Rule Caption: Increase charges related to Official Seed Sampling and Verification services.

Adm. Order No.: DOA 11-2010

Filed with Sec. of State: 7-12-2010

Certified to be Effective: 7-12-10

Notice Publication Date: 6-1-2010

Rules Amended: 603-056-0305

Subject: The proposed amendments would increase the fees for performing official seed sampling and verifications. The revenue generated by the existing fee schedule no longer provides sufficient funds to cover the costs of the official sampling program. The ODA proposes a revised fee schedule as follows: set a minimum hourly charge of \$48; raise the fee for the first sample from \$26 to \$36; increase the fee for the following three subsequent samples from \$4 to \$6; set a fee for inaccessible lots at \$50.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-056-0305

Regular Fees and Charges for Seed Sampling and Inspection

The following fees and charges are established for the services indicated. For Official Verification services, including but not limited to: fumigation, seed treatment, check-weighing and check loading, a charge of \$48 per hour shall apply. Chargeable time shall be computed to the nearest one-half hour, but shall not include travel time from the Department office to an inspection point.

For Official Sampling services, a charge of \$36 minimum shall apply for each call:

(1) \$36 for the first lot sampled;

(2) \$6 for each additional lot sampled;

(3) In instances where the first lot sampled and subsequent additional lots sampled equal an amount less than \$48 per hour; an hourly charge of \$48 per hour shall apply. Chargeable time shall be computed to the nearest one-half hour, but shall not include travel time from the Department office to an inspection point.

(4) The Department shall charge a fee of \$50, for each occurrence, when services are requested and the seed lot is inaccessible.

Stat. Auth.: ORS 561.190, 632 & 633.680

Stats. Implemented: ORS 561, 632 & 633.680

Hist.: AD 865(1-68), f. 1-22-68, ef. 2-1-68; AD 1100(21-76), f. & ef. 7-20-76; AD 11-1981, f. & ef. 7-6-81; AD 8-1983, f. & ef. 7-19-83; AD 16-1991, f. & cert. ef. 9-10-91; DOA 19-2000, f. & cert. ef. 6-14-00; DOA 11-2010, f. & cert. ef. 7-12-10

Rule Caption: Amend the rules that govern field burning due to the passage of SB 528.

Adm. Order No.: DOA 12-2010

Filed with Sec. of State: 7-12-2010

Certified to be Effective: 7-12-10

Notice Publication Date: 4-1-2010

Rules Adopted: 603-077-0119, 603-077-0139

Rules Amended: 603-077-0101, 603-077-0103, 603-077-0105, 603-077-0110, 603-077-0112, 603-077-0113, 603-077-0115, 603-077-0131, 603-077-0133, 603-077-0135, 603-077-0137, 603-077-0140, 603-077-0145, 603-077-0155, 603-077-0177

Rules Repealed: 603-077-0125

Subject: The rules govern the operation and enforcement of field burning in the Willamette Valley. The rules are necessary for the Department of Agriculture to operate the field-burning program mandated by SB 528 passed by the 2009 Oregon Legislative Assembly, including the enforcement function under ORS 468A.585 and the terms of the Memorandum of Understanding with the Environmental Quality Commission.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-077-0101

Introduction

(1) This Division applies to the open field burning, propane flaming, and stack burning of all perennial and annual grass seed and cereal grain crops, and associated residue within Multnomah, Washington, Clackamas, Marion, Polk, Yamhill, Linn, Benton and Lane Counties, herein referred to as the Willamette Valley. It also includes rules pertaining only to fees for

open field burning of perennial and annual grass seed crops in the counties outside the Willamette Valley. The open burning of all other agricultural waste material is governed by OAR chapter 340, division 264, Rules for Open Burning.

(2) Organization of rules:

(a) OAR 603-077-0103 is the policy statement of the Oregon Department of Agriculture setting forth the goals of this Division;

(b) OAR 603-077-0105 contains definitions of terms which have specialized meanings within the context of this Division;

(c) OAR 603-077-0110 lists general provisions and requirements pertaining to all open field burning, propane flaming, and stack burning with particular emphasis on the duties and responsibilities of the grower registrant;

(d) OAR 603-077-0112 lists procedures and requirements for registration of acreage, issuance of permits, collection of fees, and keeping of records, with particular emphasis on the duties and responsibilities of the local permit issuing agencies;

(e) OAR 603-077-0113 establishes acreage limits and methods of determining acreage allocations;

(f) OAR 603-077-0115 establishes criteria for authorization of open field burning, propane flaming, and stack burning pursuant to the administration of a daily smoke management control program;

(g) OAR 603-077-0119 establishes special provisions pertaining to areas where field burning is either prohibited or restricted.

(h) OAR 603-077-0131 establishes special provisions pertaining to field burning by public agencies for official purposes, such as "training fires";

(i) OAR 603-077-0133 establishes special provisions pertaining to "preparatory burning";

(j) OAR 603-077-0135 establishes special provisions pertaining to open field burning for experimental purposes;

(k) OAR 603-077-0137 establishes special provisions pertaining to burning fees outside the Willamette Valley;

(l) OAR 603-077-0139 establishes special provisions pertaining to emergency open burning;

(m) OAR 603-077-0140 establishes special provisions and procedures pertaining to emergency cessation of burning;

(n) OAR 603-077-0145 establishes provisions pertaining to propane flaming;

(o) OAR 603-077-0155 establishes provisions pertaining to "stack burning."

(p) OAR 603-077-0165 thru 603-077-0195 establish provisions pertaining to enforcement procedures and civil penalties.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0103

Policy

In the interest of public health and welfare, it is the declared public policy of the State of Oregon to reduce the practice of open field burning while developing and providing alternative methods of field sanitation and alternative methods of utilizing and marketing grass seed and cereal grain straw residues and to control, reduce, and prevent air pollution from open field burning, propane flaming, and stack burning by smoke management. In developing and carrying out a smoke management control program it is the policy of the Department:

(1) To allow for field burning based on the limits specified in state law while protecting health and welfare, recognizing:

(a) The importance of flexibility and judgment in the daily decision-making process, within established and necessary limits;

(b) The need for operational efficiency within and between each organizational level;

(c) The need for effective compliance with all regulations and restrictions.

(2) To study, develop and encourage the use of reasonable and economically feasible alternatives to the practice of open field burning.

(3) To increase the degree of public safety by preventing unwanted wild fires and smoke from open field burning, propane flaming, and stack burning near highways and freeways within the State of Oregon. The Department hereby adopts by reference, as rules of the Department OAR 837-110-0005 through 837-110-0155, the rules of the State Fire Marshal filed with the Secretary of State on November 13, 2009. These rules shall apply to that area west of the Cascade Range and south to the Douglas/Lane County lines.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0105

Definitions

As used in this Division:

(1) "Actively Extinguish" means the direct application of water or other fire retardant to an open field fire.

(2) "Permit" or "Burn Permit" or "Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575.

(3) "Candidate Fields" means all grass seed or cereal grain fields being considered for open field burning or propane flaming.

(4) "Commission" means the Environmental Quality Commission.

(5) "Critical Nonburn Area" means the area of a grass seed or cereal grain field where burning is prohibited, such as underneath power transmission lines, or near a school, airport, or hospital pursuant to OAR 603-077-0119. This prohibition may be permanent or for a limited period of time, as provided in these rules.

(6) "Crop" means cultivated agricultural plants such as grain.

(7) "Cumulative Hours of Smoke Intrusion in the Eugene-Springfield Area means the average of the totals of cumulative hours of smoke intrusion recorded, for the Eugene site and the Springfield site, where it has been determined by the Department that open field burning, propane flaming, or stack burning was a significant contributor to the smoke intrusion:

(a) The Department shall record one hour of intrusion for each hour the nephelometer hourly reading exceeds a background level by 1.8 x 10-4 b-scat units or more but less than the applicable value in subsection (b) of this section;

(b) The Department shall record two hours of intrusion for each hour the nephelometer hourly reading exceeds a background level by 5.0 x 10-4 b-scat units:

(c) The background level shall be the average of the three hourly readings immediately prior to the intrusion.

(8) "Department" means the Oregon Department of Agriculture.

(9) "Director" means the Director of the Department or delegated employee representative.

(10) "Director of Agriculture" means the Director of the Oregon Department of Agriculture.

(11) "Drying Day" means a 24-hour period during which the relative humidity reached a minimum less than 50 percent and no rainfall was recorded at the nearest reliable measuring site.

(12) "Effective Mixing Height" means either the actual height of plume rise as determined by ODA field staff or the calculated or estimated mixing height as determined by the Department.

(13) "Emergency Open Burning" is defined in Oregon Administrative Rule by the Oregon Department of Environmental Quality; OAR 340-266-0030.

(14) "Field-by-Field Burning" means burning on a limited or restricted basis in which the amount, rate, and area authorized for burning is closely controlled and monitored. Included under this definition are experimental open field burning emergency burning, and burning within priority areas.

(15) "Field Reference Code" means a unique four-part code which identifies a particular registered field for mapping purposes. The first part of the code shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the crop type, and the fourth part the size (acreage) of the field (e.g., a 35 acre perennial (Chewings Fescue) field registered on Line 2 of registration form number 1953 would be 1953-2-P-CF-35).

(16) "Field Specific Burn Plan" means an individual burn plan designed for a field or acreage that has been approved under OAR 340-266-0065 for emergency burning, which identifies specific criteria, conditions, precautions, and requirements that need to be followed when burning in order to ensure the smoke does not endanger public health and safety.

(17) "Fire District" or "District" or "Fire Protection District" means a fire permit issuing agency.

(18) "Fire Permit" means a permit issued by a local fire permit issuing agency pursuant to ORS 477.515, 476.380, or 478.960.

(19) "Fires-Out Time" means the time announced by the Department when all flames and major smoke sources associated with open field burning should be out and prohibition conditions are scheduled to be imposed.

(20) "Fluffing" means an approved mechanical method of stirring or tending crop residues for enhanced aeration and drying of the full fuel load, thereby improving the field's combustion characteristics.

(21) "Grower" means a person that cultivates perennial or annual grass seed or cereal grain.

(22) "Grower Allocation" means the amount of acreage sub-allocated annually to the grower registrant, based on the grower registrant's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued, subject to local authorization. Grower allocation is defined by the following identity:

$$\text{Grower Allocation} = (\text{Maximum annual acreage limit}) \times ((\text{Total acreage registered by the grower registrant}) / (\text{Total acreage registered in the valley}))$$

(23) "Grower Registrant" means any person who registers acreage with the Department for purposes of open field burning, propane flaming, or receives a permit to stack burn.

(24) "Identified Species" means a grass seed field consisting of Creeping Red Fescue, Chewings Fescue, or Highland Bentgrass, or as identified by the Director of Agriculture.

(25) "Marginal Conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

(26) "Marginal Day" means a day on which marginal conditions exist.

(27) "Nephelometer" means an instrument for measuring ambient smoke concentrations.

(28) "Northerly Winds" means winds coming from directions between 270° to 90° in the north part of the compass, averaged through the effective mixing height.

(29) "Open Field Burning" means burning of any grass seed or cereal grain crops, or associated residue, including steep terrain and species identified by the Director of Agriculture, or any "emergency" or "experimental" burning, as identified in these rules.

(30) "Open Field Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575.

(31) "Permit Agent" means the person under contract or otherwise authorized by the department to administer registration of acreage, issue burn permits, collect fees, and keep records for open field burning, propane flaming, or stack burning within their permit jurisdictions pursuant to ORS 468A.550 et seq.

(32) "Permit Issuing Agency" means the county court or board of county commissioners, or fire chief or a rural fire protection district or other person authorized to issue fire permits pursuant to ORS 477.515, 476.380, or 478.960.

(33) "Person" means, but is not limited to, individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the Federal Government and its agencies.

(34) "Preparatory Burning" means controlled burning of portions of selected fields for the specific purpose of reducing the fire hazard potential or other conditions which would otherwise inhibit rapid ignition burning when the field is subsequently open burned.

(35) "Priority Acreage" means acreage located within a priority area.

(36) "Priority Areas" means certain areas in the Willamette Valley where burning is restricted, such as near population centers, airports, Interstate I-5, and other highways, as specified in 603-077-0119(1).

(37) "Problem Field" means a field where special precautions need to be taken by the grower because of potential fire hazard or proximity to a sensitive area, as specified in OAR 603-077-0119(4).

(38) "Prohibition Conditions" means conditions under which open field burning is not allowed except for individual burns specifically authorized by the Department pursuant to OAR 603-077-0115(2).

(39) "Propane Flaming" means the flame sanitization of a grass seed or cereal grain field using a mobile flamer device which meets the following design specifications and utilizes an auxiliary fuel such that combustion is nearly complete and emissions are significantly reduced:

(a) Flamer nozzles shall not be more than 15 inches apart;

(b) A heat deflecting hood is required and shall extend a minimum of three feet beyond the last row of nozzles.

(40) "Propane Flaming Permit" means a permit issued by the Department pursuant to ORS 468A.575 and consisting of a validation number and specifying the conditions and acreage specifically registered and allocated for propane flaming.

(41) "Quota" means an amount of acreage established by the Department for each fire district for use in authorizing daily burning limits in a manner to provide, as reasonably as practicable, an equitable opportunity for burning in each area.

(42) "Rapid Ignition Techniques" means a method of burning in which all sides of the field are ignited as rapidly as practicable to maximize

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plume rise. When using this method, little or no preparatory backfire burning shall be done.

(43) "Released Allocation" means that part of a grower's allocation, by registration form, that is unused and voluntarily released to the Department for first come-first serve dispersal to other grower registrants.

(44) "Residue" means straw, stubble, screenings and associated crop material generated in the production of grass seed and cereal grain crops.

(45) "Responsible Person" means each person who is in ownership, control, or custody of the real property on which open field burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, or the grower registrant. Each person who causes or allows open field burning, propane flaming, or stack burning to be maintained shall also be considered a responsible person.

(46) "Screenings" means organic waste materials resulting from the seed cleaning process of grass seed and cereal grain.

(47) "Small-Seeded Seed Crops Requiring Flame Sanitation" means small-seeded grass, legume, and vegetable crops, or other types approved by the Department, which are planted in early autumn, are grown specifically for seed production, and which require flame sanitation for proper cultivation. For purposes of this Division, clover and sugar beets are specifically included. Cereal grains, hairy vetch, or field peas are specifically not included.

(48) "Smoke Management" means a system for the daily or hourly control of open field burning, propane flaming, or stack burning through authorization of the times, locations, amounts and other restrictions on burning, so as to provide for suitable atmospheric dispersion of smoke particulate and to minimize impact on the public.

(49) "Southerly Winds" means winds coming from directions between 90° to 270° in the south part of the compass, averaged through the effective mixing height.

(50) "Stack Burning" means the open burning of bound, baled, collected, gathered, accumulated, piled or stacked straw residue from perennial or annual grass seed or cereal grain crops.

(51) "Stack Burning Permit" means a permit issued by the Department pursuant to ORS 468A.575 that identifies the responsible person, date of permit issuance, and specifies the acreage and location authorized for stack burning.

(52) "State Fire Marshal Fire Safety Buffer Zone" means an area within 1/4 mile of Interstate I-5, and 1/8 mile of major highways, that is required to have a noncombustible ground surface, as defined in the State Fire Marshal rules in OAR 837 Division 110.

(53) "Steep Terrain" means a grass seed or cereal grain field defined by Revised Universal Soil Loss Equation (RUSLE) and percent slope, as identified by the Director of Agriculture.

(54) "Test Fires" means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.

(55) "Training Fires" means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.

(56) "Unusually High Evaporative Weather Conditions" means a combination of meteorological conditions following periods of rain that result in sufficiently high rates of evaporation, as determined by the Department, where fuel (residue) moisture content would be expected to approach about 12 percent or less.

(57) "Validation Number" is used interchangeably with "Burn Permit" and means:

(a) For open field burning a unique five-part number issued by the Department or its delegate identifying a specific field and acreage allowed to be open field burned and the date and time the permit was issued (e.g., a validation number issued August 26 at 2:30 p.m. for a 70-acre burn for a field registered on Line 2 of registration form number 1953 would be 1953-2-0826-1430-070);

(b) For propane flaming and stack burning a unique five part alphanumeric, issued by the Department or its delegate, identifying a specific field and acreage allowed to be propane flamed or stack burned, the date and time the permit was issued, and the burn type

(e.g., a validation number issued on July 15 for a 100 acre field to be propane flamed registered on Line 4 of registration form 9999 would be 9999-4-0715-P-100).

(58) "Ventilation Index (VI)" means a calculated value used as a criterion of atmospheric ventilation capabilities. The Ventilation Index as used in this Division is defined by the following identity:

$$VI = (\text{Effective mixing height (feet)}) / 1,000 \times (\text{Average wind speed through the effective mixing height (knots)})$$

(59) "Wildfire" means an uncontrollable fire started due to a breakdown of equipment, an accident, caused by human error or negligence or any other cause, including an intentional act.

(60) "Willamette Valley" means, for the purposes of these rules, Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill counties.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0110

General Requirements

(1) No person shall cause or allow open field burning or propane flaming on any acreage unless said acreage has first been registered and mapped pursuant to OAR 603-077-0112(1), the registration fee has been paid, and the registration (permit application) has been approved by the Department.

(2) No person shall cause or allow open field burning, propane flaming, or stack burning without first obtaining and being able to readily demonstrate a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 603-077-0112(2). On the specific day of and prior to open field burning, propane flaming, or stack burning of any grass seed or cereal grain crop or associated residue the grower registrant shall obtain, in person or by telephone, a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 603-077-0112.

(3) The Department may prohibit any person from registering acreage for open field burning or propane flaming and may deny burn permits for open field burning, propane flaming, and stack burning until all delinquent registration fees, late fees, burn permit fees, and adjudicated penalties from previous seasons are paid. The Department may also institute appropriate legal action to collect the delinquent fees.

(4) No person shall open field burn cereal grain acreage unless that person first issues to the Department a signed statement, and then acts to ensure, that said acreage will be planted in the following growing season to a small-seeded seed crop requiring flame sanitation for proper cultivation, as defined in OAR 603-077-0105(2).

(5) No person shall cause or allow open field burning, propane flaming, or stack burning which is contrary to the Department's announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division.

(6) Each responsible person open field burning or propane flaming shall have an operating radio receiver, or other monitoring device approved by the Department, and shall directly monitor the Department's burn schedule announcements at all times while open field burning or propane flaming.

(7) Each responsible person open field burning or propane flaming shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department.

(8) Each responsible person open field burning shall make every reasonable effort to expedite and promote efficient burning and prevent excessive emissions of smoke by:

(a) Meeting all of the State Fire Marshal requirements specified in OAR 837-110-0040 through 837-110-0080;

(b) Ensuring field residues are evenly distributed, dry, and in good burning condition;

(c) Employing rapid ignition techniques on all acreage where there are no imminent fire hazards or public safety concerns.

(9) In the event of a "wildfire" and a grower is unable to comply with all of the requirements of this Division, the grower shall:

(a) Immediately take action to stop, contain, and correct the problem.

(b) As soon as practicable notify the designated permit agent. If the permit agent is unavailable, the grower must contact the department.

(A) Notification must be by phone, fax, email, in person, or other method as technology allows, and is approved by the Department.

(B) If a grower is unable to contact his/her designated permit agent or the department, then a detailed message must be left with the Department and the permit agent explaining the problem, the solution, the field information, and grower information.

(10) Open field burning, propane flaming, or stack burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable

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law, ordinance, regulation, rule, permit, order or decree of the Department, Commission or any other government entity having jurisdiction.

(1) Open field burning shall be regulated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I Areas (Section 5.2 of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-200-0040).

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004,

f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09;

Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0112

Registration, Permits, Fees, Records

In administering a field burning smoke management program, the Department may contract with counties or fire districts or any other responsible individual to administer registration of acreage, issuance of permits, collection of fees, and keeping of records for open field burning, propane flaming, or stack burning within their permit jurisdictions. The Department shall pay said authority for these services in accordance with the payment schedule provided for in ORS 468A.615. Three-quarters of said payment shall be made prior to July 1 of each year and the remainder shall be paid within ten days after completion of the end of season reconciliation:

(1) Registration of acreage:

(a) On or before April 1 of each year, each grower intending to open burn or propane flame under this Division shall register the total acreage to be open burned or propane flamed. Said acreage shall be registered with the Department or its authorized permit agent on the registration forms provided. Candidate fields for open field burning or propane flaming shall be listed on the registration form and shall also be delineated on specially provided registration map materials and identified using a unique field reference code. Each candidate field listed state if the field is located in a priority area, contains a critical non-burn area, is a problem field or is being requested for emergency burning. Registration, listing of fields, and mapping shall be completed according to the established procedures of the Department. Fields to be registered for burning must be planted in crops that can be open burned or propane flamed in the same year that they are registered, and must be owned or under the control of the registrant. At the time of registration, a non-refundable registration fee of \$4 shall be paid for each acre registered for open field burning and \$2 shall be paid for each acre registered for propane flaming. A complete registration (permit application) shall consist of a fully executed registration form, map and fee. Acreage registered by April 1 may be issued a burn permit if:

(A) Allocation is available; and

(B) The initial registration fee account has a sufficient balance.

(b) Registration for stack burning will occur twice annually. Each grower intending to stack burn under this Division during the first stack burn period, February 5 through May 31, must register between January 2 through January 31.

(c) Each grower intending to stack burn under this Division during the second stack burn period, October 5 through December 31, must register between September 1 and September 30.

(d) Registration of open field burning and propane flaming acreage after April 1 of each year shall require the prior approval of the Department and an additional \$2 per acre late registration fee. The late registration fee shall not be charged if the late registration is not due to the fault of the registrant or one under the registrant's control;

(e) Copies of all registration forms and fees shall be forwarded to the Department promptly by the permit agent. Registration map materials shall be made available to the Department at all times for inspection and reproduction;

(f) The Department shall act on any registration application within 60 days of receipt of a completed application. The Department may deny or revoke any registration application which is incomplete, false or contrary to state law or this Division;

(g) The grower registrant shall insure the information presented on the registration form and map is complete and accurate.

(2) Permits:

(a) Permits for open field burning, propane flaming, or stack burning shall be issued by the Department, or its authorized permit agent, to the grower registrant in accordance with the established procedures of the Department, and the times, locations, amounts and other restrictions set forth by the Department or this Division;

(b) A fire permit from the designated fire permit issuing agency is also required for all open field burning pursuant to ORS 477.515, 476.380, 478.960;

(c) A valid open field burning permit shall consist of:

(A) An open field burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered and annually allocated for burning;

(B) A validation number issued by the designated permit agent on the day of the burn identifying the specific acreage allowed for burning and the date and time the permit was issued.

(d) A valid propane flaming permit shall consist of:

(A) A propane flaming registration form issued by the Department which specifies the permit conditions in effect at all times while flaming and which identifies the acreage specifically registered and annually allocated for propane flaming;

(B) A validation number issued by the designated permit agent identifying the specific acreage allowed for propane flaming and the date and time the permit was issued.

(e) A valid stack burning permit shall consist of the name of the responsible person and date the permit was issued, and shall specify the acreage and location authorized;

(f) Each responsible person open field burning, propane flaming, or stack burning shall pay a per acre burn fee within ten days of the date the permit was issued. The fee shall be:

(A) \$16 per acre sanitized by open field burning;

(B) \$4 per acre sanitized by propane flaming;

(C) \$10 per acre burned in stacks.

(D) For grass seed and cereal grain residue from previous seasons, broken bales, or fields where a portion of straw was removed using usual or standard baling methods, the acreage actually burned shall be estimated and the same per acre fee as imposed in paragraph (C) of this subsection shall be charged. The estimated acreage shall be rounded to the nearest whole acre.

(g) Burning permits shall at all times be limited by and subject to the burn schedule and other requirements or conditions announced or set forth by the Department;

(h) No person shall issue burning permits for open field burning, propane flaming, or stack burning of:

(A) More acreage than the amount sub-allocated annually to the grower by the Department pursuant to OAR 603-077-0113(2);

(B)(i) Priority or fire safety buffer zone acreage located on the upwind side of any city, airport, Interstate freeway or highway within the same priority area or buffer zone.

(ii) It is the responsibility of each designated permit agent to establish and implement a system for distributing open field burning, propane flaming, or stack burning permits to individual grower registrants when burning is authorized, provided that such system is fair, orderly and consistent with state law, this Division and any other provisions set forth by the Department.

(3) Fees:

(a) Permit agents shall collect, properly document, and promptly forward all required registration fees, late registration fees, and burn fees to the Department;

(b) All fees shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund.

(4) Records:

(a) Permit agents shall at all times keep proper and accurate records of all transactions pertaining to registrations, permits, fees, allocations, and other matters specified by the Department. Such records shall be kept by the permit agent for a period of at least five years and made available for inspection by the appropriate authorities;

(b) Permit agents shall submit to the Department on specially provided forms weekly reports of all acreage burned in their permit jurisdictions. These reports shall cover the weekly period of Monday through Sunday, and shall be returned to the Department no later than the first working day of the following week.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004,

f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09;

Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0113

Acreage Limitations, Allocations

(1) Limitation of Acreage:

(a) Except for acreage and residue open field burned pursuant to OAR 603-077-0135, 603-077-0139, 603-077-0140, 603-077-0145, and 603-077-0155, the maximum acreage to be open field burned annually in the

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Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

Willamette Valley under this Division shall not exceed 15,000 acres of steep terrain and "identified species" as defined in OAR 603-077-0105.

(b) Steep terrain and identified species burning is prohibited in Benton and Lane Counties, and in Linn County, except for portions of northeast Linn County that are east of the North Santiam River and North of Jefferson-Scio Drive and Robinson Drive to the west boundary of the city of Scio and north of Highway 226, and portions of northeast Linn County that are east of Richardson Gap Road and north of Fish Hatchery Drive.

(c) The Commission may by order permit emergency open field burning, propane flaming, or stack burning of up to 2,000 acres annually, in addition to the limitations on acreage specified in this section. Requirements for emergency burning are specified in OAR 603-077-0139.

(d) The maximum acreage to be propane flamed annually in the Willamette Valley under this Division shall not exceed 500 acres for the years 2009, 2010, 2011, and 2012. For the year 2013 and thereafter all propane flaming is prohibited.

(e) The maximum acreage to be stack burned annually in the Willamette Valley under this Division shall not exceed 1000 acres for the years 2009, 2010, 2011, 2012. For the year 2013 and thereafter all stack burning is prohibited.

(f) Other limitations on acreage allowed to be open field burned are specified in OAR 603-077-0115(7), 603-077-0119, 603-077-0133(1), and 603-077-0135(1), 603-007-0139.

(2) Allocation of Acreage:

(a) In the event that total open field burning and propane flaming registration as of April 1 is less than or equal to the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a), and (c) of this rule, the Department shall sub-allocate to each grower registrant and each district (subject to daily burn authorization) 100 percent of their respective registered acreage;

(b) In the event that total open field burning and propane flaming registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a), and (c), of this rule, the Department may sub-allocate to growers on a pro rata share basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation."

(c) Transfer of allocations for farm management purposes may be made within and between fire districts and between grower registrants on a one-in/one-out basis under the supervision of the Department. The Department may assist grower registrants by administering a reserve of released allocation for first come-first served utilization.

(d) In the event that total stack burning registration at the close of the first registration period of January 2 through January 31 is less than or equal to the maximum of 250 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the first stack burn period of February 5 through May 31, the Department shall sub-allocate to each grower registrant (subject to daily burn authorization) 100 percent of their respective registered acreage.

(e) In the event that total stack burning registration at the close of the first registration period of January 2 through January 31 exceeds the maximum of 250 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the first stack burn period of February 5 through May 31, the Department may sub-allocate to each grower registrant on a pro rata basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation." If any acreage remains unburned at the end of this first stack burn period, this acreage will be added to the maximum acreage allowed to be burned during the second burn period pursuant to subsections (2)(f)(g)

(f) In the event that total stack burning registration at the close of the second registration period of September 1 through September 30 is less than or equal to the maximum of 750 acres allowed to be burned for the second stack burn period of October 5 through December 31 pursuant to subsection (1)(e) of this rule, the Department shall sub-allocate to each grower registrant (subject to daily burn authorization) 100 percent of their respective registered acreage;

(g) In the event that total stack burning registration at the close of the second registration period of September 1 through September 30 exceeds the maximum of 750 acres out of the 1000 acre annual allocation pursuant to subsection (1)(e) of this rule, for the second stack burn period of October 5 through December 31, the Department may sub-allocate to each grower registrant on a pro rata basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation."

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585

603-077-0115

Daily Burning Authorization Criteria

As part of the Smoke Management Program provided for in ORS 468A.590, the Department shall set forth the types and extent of open field burning, propane flaming, and stack burning to be allowed each day according to the provisions established in this section and this Division:

(1) During the active burning season and on an as needed basis, the Department shall announce the burning schedule over the burning radio network, or other communication technology method as approved by the Department, and operated specifically for this purpose or by other appropriate means. The schedule shall specify the times, locations, amounts and other restrictions in effect for open field burning, propane flaming, and stack burning. The Department shall notify Oregon Emergency Management of the burning schedule for dissemination to appropriate Willamette Valley agencies.

(2) Prohibition conditions:

(a) Prohibition conditions shall be in effect at all times unless specifically determined and announced otherwise by the Department;

(b) Under prohibition conditions, no permits shall be issued and no open field burning shall be conducted in any area except for individual burns specifically authorized by the Department on a limited extent basis. Such limited burning may include field-by-field burning, preparatory burning, or burning of test fires, except that:

(A) No open field burning shall be allowed:

(i) In any area subject to a ventilation index of less than 10.0;

(ii) In any area upwind, or in the immediate vicinity, of any area in which, based upon real-time monitoring, a violation of federal or state air quality standards is projected to occur.

(B) Only test-fire burning may be allowed:

(i) In any area subject to a ventilation index of between 10.0 and 15.0, inclusive, except for experimental burning specifically authorized by the Department pursuant to OAR 603-077-0135;

(ii) When relative humidity at the nearest reliable measuring station exceeds 50 percent under forecast northerly winds or 65 percent under forecast southerly winds.

(3) Marginal conditions:

(a) The Department shall announce that marginal conditions are in effect and open field burning is allowed when, in its best judgment and within the established limits of this Division, the prevailing atmospheric dispersion and burning conditions are suitable for satisfactory smoke dispersal with minimal impact on the public, provided that the minimum conditions set forth in paragraphs (2)(b)(A) and (B) of this rule are satisfied;

(b) Under marginal conditions, permits may be issued and open field burning may be conducted in accordance with the times, locations, amounts, and other restrictions set forth by the Department and this Division.

(4) Hours of burning:

(a) Burning hours shall be limited to those specifically authorized by the Department each day and may be changed at any time when necessary to attain and maintain air quality;

(b) Burning hours may be reduced by the fire chief or his deputy, and burning may be prohibited by the State Fire Marshal, when necessary to prevent danger to life or property from fire, pursuant to ORS 478.960.

(5) Locations of burning:

(a) Locations of burning shall at all times be limited to those areas specifically authorized by the Department; except for areas where burning is restricted or prohibited, as specified in OAR 603-077-0119.

(6) Amounts of burning:

(a) To provide for an efficient and equitable distribution of burning, daily authorizations of acreages shall be issued by the Department in terms of single or multiple fire district quotas. The Department shall establish quotas for each fire district and may adjust the quotas of any district when conditions in its judgment warrant such action;

(b) Unless otherwise specifically announced by the Department, a one quota limit shall be considered in effect for each district authorized for burning;

(c) The Department may issue more restrictive limitations on the amount, density or frequency of burning in any area or on the basis of crop type, when conditions in its judgment warrant such action.

(7) Limitations on burning based on air quality:

(a) Should smoke intrusions occur in the Eugene-Springfield area from the burning of identified species, steep terrain, propane flaming, or stack burning, pursuant to OAR 603-077-0113, that are in excess of the

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cumulative hours identified below, the minimum allowable effective mixing height for any additional open field burning for the remainder of the year shall be as follows:

Cumulative Hours in the — Minimum Effective
Eugene-Springfield Area — Mixing Height (feet)
0-14 hours — No minimum
15-19 hours — 4,000
20-14 hours — 4,500
25 and greater — 5,500

(b) The effective mixing height restrictions in paragraph (a) of this subsection shall not apply to emergency burning or experimental burning, pursuant to OAR 603-077-0135 or 603-077-0139.

(8) Limitations on burning based on rainfall:

(a) Open field burning and propane flaming shall be prohibited in any area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station;

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions:

(a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgment warrant such action;

(b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid;

(c) The Department may designate additional areas as priority areas when conditions in its judgment warrant such action.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 17-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0119

Burning Restrictions and Prohibitions.

The following identifies smoke management requirements for Priority Areas, Critical Non-Burn Areas, Fire Marshal Buffer Zones, and Problem Fields, where burning is either restricted or prohibited, in order to further protect public health and safety from smoke impacts and potential fire hazards:

(1) Priority Areas:

(a) The following are priority areas where open field burning, propane flaming, and stack burning are restricted by the Department. No priority area acreage shall be burned upwind of any city, airport, Interstate freeway within the same priority area. Any burning within a priority area is subject to field by field authorization of the department.

(A) Within three miles of the city limits of incorporated cities having populations of 10,000 or greater;

(B) Within three miles of the city limits of the City of Lebanon;

(C) Within one mile of airports servicing regularly scheduled airline flights;

(D) Areas on the west and east side of and within 1/2 mile of Interstate I-5, from Portland to the Douglas/Lane County lines;

(E) Areas on the west and east side of and within 1/4 mile of these highways: 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.

(b) Parts of the Interstate I-5 and highway priority areas identified above are subject to the State Fire Marshal rules for fire safety buffer zones, which require a noncombustible area be established. See subsection (3) of these rules.

(c) Each responsible person open field burning, propane flaming, or stack or pile burning within a priority area shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the priority area.

(2) Critical Non-Burn Areas:

(a) Burning is prohibited in critical non-burn areas. No person shall cause or allow any open field burning, propane flaming, or stack burning in the following critical non-burn areas, except as provided in these rules:

(A) Any part of a field that is underneath a power transmission line of 230kV rating or greater, extending 75 feet on either side of the center line of the power transmission line.

(B) Any part of a field within 500 feet of a hospital

(C) Any part of a field within 500 feet of a school, when the school is in session. A school shall be considered not in session during the following time periods:

(i) During the regular summer closure period, ending 7 days prior to the first day of regular fall classes. The Department will determine the end of the regular summer closure period by reviewing each effected schools regularly published school-year calendar;

(ii) 2 hours after the time the school day is officially over. The official end of the school day will be determined by the Department as published in each effected schools regular school-day calendar;

(D) Any part of a field within 500 feet of any airport servicing regularly scheduled airline flights. In cases where an airport does not have regularly scheduled flights, field by field burning may be authorized by the Department, in accordance with the requirements in subsection (4) that apply to problem fields.

(b) It shall be the responsibility of the grower to ensure the critical non-burn area does not burn. It is recommended that the field stubble either be flail-chopped, mowed, or otherwise cut close to the ground, and the loose straw removed so that the field will not sustain an open fire. Application of water to the critical non-burn area to ensure there is no combustion is also recommended. Should any open fire occur, all flame and smoke sources shall be immediately and actively extinguished.

(c) Any person conducting open field burning, propane flaming, or stack burning adjacent to a critical non-burn area shall take appropriate steps to ensure that the critical non-burn area remains unburned.

(d) Field by field burning may be authorized by the Department with 500 feet of a school that is not in session, subject to the following restrictions:

(A) No burning is allowed upwind of the school;

(B) The responsible person burning the field makes a visual observation to first confirm that there are no children or other persons present on the school grounds.

(e) When burning near a school or hospital critical non-burn area, or beyond 500 feet of a school that is not in session, the Department shall take special precautions to ensure that the prevailing winds do not cause smoke to impact the school or hospital.

(f) Any field that is intersected by a power transmission line of 230kV rating or greater shall be registered and burned as two separate fields to minimize the potential of smoke coming into direct contact with the power transmission line.

(3) State Fire Marshal Safety Buffer Zones:

(a) State Fire Marshal Rules for fire safety buffer zones, as specified in OAR 837, division 110, establish a 1/2 mile buffer zone for Interstate I-5 and the highways listed below in this subsection. No person shall cause or allow any open field burning, propane flaming, or stack burning in the following portions of the State Fire Marshal fire safety buffer zones:

(A) Within 1/4 mile of either side of Interstate I-5, from Portland to the Douglas/Lane County lines.

(B) Within 1/8 mile of either side of the designated roadways listed below, as specified in the State Fire Marshal Rules in OAR 837, division 110:

(i) ORE 99 — The section from Junction City to Eugene;

(ii) ORE 99E — The sections from Oregon City to Salem and from Albany to Junction City;

(iii) ORE 99W — The entire section from Portland to Junction City;

(iv) US 20 — The section from Philomath to Lebanon;

(v) ORE 22 — The section from ORE 18 to Mehama;

(vi) US 26 — The section from ORE 47 interchange to Portland;

(vii) ORE 34 — The section from Corvallis to Lebanon.

(b) The 1/4 and 1/8 mile safety buffer zone distances identified above must be a noncombustible area, as defined in the State Fire Marshal Rules. For all requirements related to the State Fire Marshal Fire Safety Buffer Zones, see OAR 837, division 110. Nothing in the Departments' rules regarding fire safety buffer zones replaces or substitutes for meeting all the requirements in the State Fire Marshal Rules.

(c) The area beyond the 1/4 and 1/8 mile noncombustible area in the fire safety buffer zone represents the area that is considered a priority area as described above in subsection (1)(a)(D) and (E), Burning in this part of the fire safety buffer zone is subject to the restrictions for priority areas in subsection (1) of these rules.

(4) Problem Fields:

(a) No problem fields shall be burned without first contacting the Department to determine what specific weather conditions and smoke management criteria need to be followed when burning the field, in order pro-

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tect any school, hospital, airport, or other sensitive area, in proximity to the field.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0131

Burning by Public Agencies (Training Fires)

In order to promote public safety through the training of firefighting personnel, open field burning on grass seed or cereal grain acreage by a fire department or rural fire protection district is subject to the following conditions:

(1) Such burning shall be deemed necessary by the official local fire authority having jurisdiction, and shall be conducted in a manner consistent with the primary purpose of providing training to fire fighting personnel in accordance with ORS 468A.020(e)

(2) Such burning shall be limited to the minimum number of acres and occasions reasonably needed to ensure adequate fire fighting personnel training.

(3) Consultation with the Department by the fire department or rural fire protection district is required in order to identify the appropriate atmospheric dispersion and burning conditions for optimum smoke dispersal to protect the public from smoke impacts.

(4) No training fires shall be allowed on any acreage that is in a critical non-burn area, State Fire Marshal safety buffer zone, Priority Area, or on a Problem Field, and shall comply with the requirements in subsection (3) of these rules.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0133

Preparatory Burning

The Department encourages the preparatory burning of portions of selected fields to reduce or eliminate potential fire hazards and safety problems and to expedite the subsequent burning of the field. Such burning shall be consistent with smoke management considerations and subject to the following conditions:

(1) Each responsible person shall limit the acres burned to the minimum necessary to eliminate potential fire hazards or safety problems but in no case exceed five acres for each burn unless specifically authorized by the Department.

(2) Each responsible person conducting preparatory burning shall employ backfiring burning techniques.

(3) Each responsible person conducting preparatory burning shall comply with the provisions of OAR 603-077-0110 through 603-077-0113 and 837-110-010 through 837-110-090.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0135

Experimental Burning

The Department in conjunction with the Department of Environmental Quality may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468A.620, consistent with smoke management considerations and subject to the following conditions:

(1) Acreage experimentally open field burned, propane flamed, or stack burned shall not exceed 1,000 acres annually.

(2) Acreage experimentally burned shall not apply to the district allocation or to the maximum annual acreage limit specified in OAR 603-077-0113(1)(a), (c), or (d).

(3) Such burning is exempt from the provisions of OAR 603-077-0115 but must comply with the provisions of 603-077-0110 and 603-077-0112, except that the Department may elect to waive all or part of the per acre open field burning or propane flaming fee.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0137

Burning Fees Outside Willamette Valley

In accordance with ORS 468A.615(1)(b) each person open field burning perennial or annual grass seed crops in counties outside the Willamette Valley, shall pay the Department \$8.00 for each acre burned.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585
Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 18-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0139

Emergency Open Burning

The OARs regarding Emergency Opening Burning are defined by the Oregon Department of Environmental Quality in OAR 340-266-0065. If approved, the open field burning of the emergency burn will be conducted by the Department in accordance with these rules.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0140

Emergency Burning Cessation

Pursuant to ORS 468A.610 and upon finding of danger to public health or safety, the Commission or the Department of Environmental Quality may order temporary emergency cessation of all open field burning in any area of the Willamette Valley.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 10-2009(Temp), f. & cert. ef. 7-15-09 thru 12-1-09; Administrative correction 12-23-09; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0145

Propane Flaming

(1) The use of propane flammers, mobile field sanitizing devices, and other field sanitation methods specifically approved by the Department are subject to the following conditions:

(a) The field shall first be prepared as follows:

(A) Either the field must have previously been open burned and the appropriate fees paid; or

(B) The field stubble must be flail-chopped, mowed, or otherwise cut close to the ground and the loose straw removed so the remaining stubble will not sustain an open fire.

(b) Propane flaming operations shall comply with the following criteria:

(A) Unless otherwise specifically restricted by the Department propane flaming may be conducted only between the hours of 9 a.m. and sunset between June 1 and August 31 of each year and 9 a.m. to 1/2 hour before sunset between September 1 and October 14 of each year;

(B) Propane flammers shall be operated in overlapping strips, crosswise to the prevailing wind, beginning along the downwind edge of the field;

(C) No person shall cause or allow propane flaming which results in sustained open fire. Should sustained open fire create excessive smoke all flame and smoke sources shall be immediately and actively extinguished;

(D) No person shall cause or allow any propane flaming which results in visibility impairment on any Interstate highways or roadways specified in OAR 837-110-0080(1) and (2). Should visibility impairment occur, all flame and smoke sources shall be immediately and actively extinguished;

(E) The acreage must be registered and permits obtained pursuant to OAR 603-077-0112;

(F) No person shall cause or allow propane flaming when either the relative humidity at the nearest reliable measuring station exceeds 65 percent or the surface winds exceed 15 miles per hour;

(G) All regrowth over eight inches in height shall be mowed or cut close to the ground and removed.

(c) All propane flaming operations shall be conducted in accordance with the State Fire Marshal's safety requirements specified in OAR 837-110-0100 through 837-110-0155;

(d) No person shall cause or allow to be initiated or maintained any propane flaming or other mobile fire sanitation methods not certified by the Department on any day or at any time if the Department has determined and notified the State Fire Marshal that propane flaming is prohibited because of adverse meteorological or air quality conditions.

(2) The Department may issue restrictive limitations on the amount, density or frequency of propane flaming or other mobile fire sanitation methods in any area when meteorological conditions are unsuitable for adequate smoke dispersion, or deterioration of ambient air quality occurs.

Stat. Auth.: ORS 561.190
Stats. Implemented: ORS 468A.585
Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 12-2010, f. & cert. ef. 7-12-10

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603-077-0155

Stack Burning

The open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops used for seed production is allowed subject to the following conditions:

(1) No person shall cause or allow to be initiated or maintained any stack burning on any day or at any time if the Department has notified Oregon Emergency Management that such burning is prohibited because of meteorological or air quality conditions.

(2) No person shall cause or allow stack burning of any grass seed or cereal grain residue unless said residue is dry and free of all other combustible and non-combustible material.

(3) Each responsible person shall make every reasonable effort to promote efficient burning, minimize smoke emissions, and extinguish any stack burning which is in violation of any rule of the Commission.

(4) No stack burning shall be conducted within any State Fire Marshal buffer zone "non-combustible ground surface" area (e.g., within 1/4 mile of Interstate I-5, or 1/8 mile of any designated roadway), as specified in OAR 837-110-0080.

(5) The acreage must be registered and permitted pursuant to OAR 603-077-0112.

(6) Unless otherwise specifically agreed by the parties, after the straw is removed from the fields of the grower, the responsibility for the further disposition of the straw, including burning or disposal, and payment of the appropriate fees, shall be upon the person who bales, removes, controls, or is in possession of the straw.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 17-2003, f. & cert. ef. 5-15-03; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 12-2010, f. & cert. ef. 7-12-10

603-077-0177

Civil Penalty Schedule Matrices

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation relating to field burning pertaining to statutes, rules, permits or orders by service of a written notice of assessment of civil penalty upon the Respondent. The amount of any civil penalty shall be determined through the use of the following matrix in conjunction with the formula contained in OAR 603-077-0180:

Civil penalty matrix

Magnitude of Violation — Major — Moderate — Minor

Class I — \$6,000 — \$3,000 — \$1,500

Class II — \$3,000 — \$1,500 — \$750

Class III — \$500 — \$250 — \$10

No civil penalty issued by the Director pursuant to this matrix shall be less than fifty dollars (\$50) or more than ten thousand dollars (\$10,000) for each day of each violation. This matrix shall apply to the following: Any violation related to field burning statutes, rules, permits or orders.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 468A.585

Hist.: DOA 2-1998, f. & cert. ef. 3-3-98; DOA 22-2004, f. & cert. ef. 8-10-04; DOA 12-2010, f. & cert. ef. 7-12-10

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**Department of Agriculture,
Oregon Dairy Products Commission
Chapter 617**

Rule Caption: Amend Administrative Rule for First Processors of Milk to delete reference to repealed ORS 576.135(3).

Adm. Order No.: ODDC 2-2010

Filed with Sec. of State: 6-21-2010

Certified to be Effective: 6-21-10

Notice Publication Date: 5-1-2010

Rules Amended: 617-010-0085

Subject: Amends Administrative Rule language for First Processors of Milk to delete reference to repealed ORS 576.135(3) assessments to be withheld and paid by first processors.

Rules Coordinator: Pete Kent—(503) 229-5033

617-010-0085

Reports to be Filed and Assessments to be Paid to the Commission by First Processors of Milk

(1) For the purposes of this rule:

(a) "Dairy Products" shall have the meaning set forth in ORS 621.152(3);

(b) "First Processor" means a person who, in the first instance, engages in the processing or manufacturing of dairy products in this state;

(c) "Processing" or "Manufacturing" means the heating, drying, mixing, churning, separating, extracting, freezing, combining or otherwise creating dairy products.

(2) First processors must submit completed and signed assessment reports on commission-approved forms. Assessment reports shall include all dairy products processed or manufactured in Oregon in the previous month. Assessment reports are due in the commission office by 5:00 pm on the last day of each month.

(3) At the time that reports are due the Commission from the first processor as required in section (1) of this rule, the first processor shall attach and forward payment to the Commission for the assessment due as set forth in each report. The forms shall be signed by the first processor and filled in with the required data as shown on such forms, including, but not limited to, the month in which the milk was processed, the gross hundred-weight, and the total assessment deducted and withheld.

(4) The assessment to be withheld and paid by first processors is one-fourth of a cent per pound of butterfat.

Stat. Auth.: ORS 576

Stats. Implemented:

Hist.: DP 2-1984, f. 2-14-84, ef. 3-1-84; ODDC 1-2001, f. 8-27-01, cert. ef. 9-1-01; ODDC 2-2010, f. & cert. ef. 6-21-10

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**Department of Agriculture,
Oregon Potato Commission
Chapter 658**

Rule Caption: Changes per diem compensation form \$30 to \$65 per day.

Adm. Order No.: OPC 1-2010

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 658-040-0005

Subject: Sets per diem stipend to \$65 per day for commission members who are not eligible in full-time public service. The stipend compensation is for each day which a member is engaged in performance of official commission duties.

Rules Coordinator: Jennifer Fletcher—(503) 731-3300

658-040-0005

Per Diem Compensation

(1) Subject to the availability of funds in the budget of the commission, the Oregon Potato Commission must pay any member of the commission, other than a member who is employed in full-time public service, compensation for each day or portion thereof during which the member is actually engaged in the performance of official commission duties.

(2) The rate of compensation is \$65 per day.

(3) In order to receive compensation, a member must submit to the Oregon Potato Commission a written claim for compensation by the 20th day of the calendar month following the month for which the member seeks compensation. The member must specify the amount of time the member spent on official commission duties as well as the nature of the duties performed for any day or portion thereof for which the member claims compensation.

Stat. Auth.: ORS 576.304

Stats. Implemented: ORS 576.206 & 576.416

Hist.: OPC 1-2007, f. & cert. ef. 7-17-07; OPC 1-2010, f. 6-29-10, cert. ef. 7-1-10

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**Department of Agriculture,
Oregon Wheat Commission
Chapter 678**

Rule Caption: Reiterates Commissioner qualifications and allows penalties to be waived by Administrator for good cause.

Adm. Order No.: WHEAT 1-2010

Filed with Sec. of State: 7-15-2010

Certified to be Effective: 7-15-10

Notice Publication Date: 5-1-2010

Rules Adopted: 678-030-0025, 678-030-0027

Rules Amended: 678-010-0050, 678-030-0000, 678-030-0010, 678-030-0020, 678-030-0030

Subject: The amendments to section 10 allow the Administrator to waive any penalty under \$1,000.00 for good cause. In the past, the Commission has received requests for penalties to be waived due to

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illness. This would allow the Administrator the flexibility to do that where appropriate.

The amendments and adoptions to OAR 678 section 30 are needed as clarification following the passage of revisions to ORS 578 in 2009. The proposed changes detail Commissioner qualifications bringing OWC administrative rules into alignment with statute, allowing commissioner s to expense reimbursement forms on a quarterly basis and eliminating the two, four ear term restriction on Commissioner service.

Rules Coordinator: Tana Simpson—(503) 229-6665

678-010-0050

Penalties

(1) Any first purchaser or other person who delays transmittal of funds beyond the time set by the commission shall pay ten percent of the amount due for the first month of delay and one and one half percent of the amount due for each month of delay thereafter.

(2) The commission may by majority vote waive the penalties described in subsection (1) for good cause. The administrator may waive the penalties described in subsection (1) if the amount of the penalty is \$1,000 or less, if the penalty was incurred due to illness or other good cause, and if the administrator is an employee of the commission. Penalties of \$1,000 or less may be waived by the Administrator for illness or good cause. The Administrator shall report all waived penalties to the commission on a quarterly basis.

(3) If any first purchaser or other person responsible for transmittal of the assessment monies to the commission willfully refuses to turn over assessment monies to be collected, the first purchaser or other person shall pay an additional penalty equal to twice the amount of the assessment monies so withheld.

(4) The penalties described in subsections (1) and (3) are in addition to the penalties prescribed in ORS 578.990.

Stat. Auth.: ORS 576.304 & ORS 578
Stats. Implemented: ORS 576.304 & ORS 578
Hist.: WC 2-1991, f. & cert. ef. 7-15-91; WHEAT 1-2006, f. & cert. ef. 1-27-06; WHEAT 1-2010, f. & cert. ef. 7-15-10

678-030-0000

Per Diem Compensation

(1) Subject to the availability of funds in the budget of the commission, the Oregon Wheat Commission must pay any member of the commission, other than a member who is employed in full-time public service, compensation for each day or portion thereof during which the member is actually engaged in the performance of official commission duties.

(2) The rate of compensation is limited to \$30 per day, pursuant to ORS 292.495(1).

(3) In order to receive compensation, a member must submit to the Oregon Wheat Commission a written claim for compensation by the 20th day of the third calendar month following the month for which the member seeks compensation. The member must specify the amount of time the member spent on official commission duties as well as the nature of the duties performed for any day or portion thereof for which the member claims compensation.

Stat. Auth.: ORS 292.495, 578.060, 578.090
Stats. Implemented: ORS 578
Hist.: WHEAT 1-2008, f. & cert. ef. 1-11-08; WHEAT 1-2010, f. & cert. ef. 7-15-10

678-030-0010

Reimbursement of Travel and Other Expenses

(1) Subject to sections (2)-(5) of this rule, a member of the Oregon Wheat Commission, including a member employed in full-time public service, may receive actual and necessary travel and other expenses actually incurred in the performance of the member's official duties.

(2) In order to receive reimbursement of actual and necessary travel and other expenses, a member must submit to the Oregon Wheat Commission a written itemized claim for reimbursement supported by receipts, invoices or other appropriate documentation for travel and other expenses by the 20th day of the third calendar month following the month in which the member incurred the expense. The claim for reimbursement must include the following information for each expense:

- Date on which the member incurred the expense; and
- Nature of the expense; and
- Amount of the expense.

(3) An expense that exceeds \$500.00 must be authorized by the Oregon Wheat Commission before a member incurs the expense.

(4) For the purposes of this rule, "travel and other expenses" are limited to reasonable expenses. An expense is reasonable if:

(a) It is an actual expense incurred by a member in carrying out official commission business, which is within the member's scope of responsibilities; and

(b) The expense is necessary to enable the member to carry out official commission business.

Stat. Auth.: ORS 292.495, 578.060
Stats. Implemented: ORS 578 & 576
Hist.: WHEAT 1-2008, f. & cert. ef. 1-11-08; WHEAT 1-2010, f. & cert. ef. 7-15-10

678-030-0020

Reimbursement for Hiring a Substitute

(1) As used in OAR 678-015-0010, "other expenses" includes expenses incurred by a member of the Oregon Wheat Commission in employing a substitute to perform duties, including personal duties, normally performed by the member, which the member is unable to perform because of the performance of official duties and which, by the nature of such duties, cannot be delayed without risk to health or safety.

(2) The amount that a member may be reimbursed for expenses incurred in employing a substitute must not exceed \$25 per day, pursuant to ORS 292.495(3).

Stat. Auth.: ORS 292.495, ORS 578.060.
Stats. Implemented: ORS 578
Hist.: WHEAT 1-2008, f. & cert. ef. 1-11-08; WHEAT 1-2010, f. & cert. ef. 7-15-10

678-030-0025

Definitions

The following definitions shall apply in OAR 678-030-0025 to 678-030-0030.

(1) "Grower member" means a person who has been actually engaged in growing wheat in this state for the five year period immediately prior to being appointed to the commission.

(2) "Handler member" means a person engaged in the handling or processing of wheat produced in Oregon and who has an active interest in the positive economic development of the wheat industry.

(3) "Public member" means a person who is not associated with the production or handling of wheat and who has an active interest in the positive economic development of the wheat industry.

Stat. Auth.: ORS 578.090.
Stats. Implemented: ORS 578
Hist.: WHEAT 1-2010, f. & cert. ef. 7-15-10

678-030-0027

Number and Qualifications of Voting Commissioners

(1) The Oregon Wheat Commission will include six voting commissioners appointed by the Director of the Oregon Department of Agriculture.

(2) Voting commissioners will have the following qualifications throughout their terms of office:

(a) All voting commissioners must be United States citizens residing in the state of Oregon.

(b) Five voting commissioners must be grower members.

(A) Not fewer than three of the five grower members must be engaged in growing wheat in the area comprised of Umatilla, Morrow, Gilliam, Sherman, Wasco and Jefferson Counties.

(B) Not fewer than one of the five grower members must be engaged in growing wheat in the area of the state of Oregon that lies east of the summit of the Cascade Mountains and that is not within Umatilla, Morrow, Gilliam, Sherman, Wasco or Jefferson Counties.

(C) Not fewer than one of the five grower members must be engaged in growing wheat in the area of the state of Oregon lying west of the summit of the Cascade Mountains.

(D) One voting commissioners must be a public member.

Stat. Auth.: ORS 578
Stats. Implemented: ORS 578
Hist.: WHEAT 1-2010, f. & cert. ef. 7-15-10

678-030-0030

Term Limits

Each grower member and public member of the commission shall be appointed to a four-year term. Should a vacancy occur, the Director of the ODA would appoint a replacement for the remainder of the term.

Stat. Auth.: ORS 578
Stats. Implemented: ORS 578
Hist.: WHEAT 1-2008, f. & cert. ef. 1-11-08; WHEAT 1-2010, f. & cert. ef. 7-15-10

ADMINISTRATIVE RULES

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

Rule Caption: Rule updates definition of “pattern of violation” used in enforcement penalty matrix.

Adm. Order No.: BCD 9-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 9-30-10

Notice Publication Date:

Rules Amended: 918-001-0036

Subject: This rule updates the definition of a “pattern of violation” that is used by the different advisory boards of the State Building Codes Division in applying the civil penalty matrix for enforcement cases. The civil penalty imposed for a violation is increased where there is a pattern of violation. The amended rule changes the definition of “pattern of violation” to a five year period for all violations.

Rules Coordinator: Dolores Wagner—(503) 373-1258

918-001-0036

Guidelines for Civil Penalties

(1) Scope and Authority. This rule sets guidelines for assessing a civil penalty under ORS 446.995 & 455.895.

(2) Definitions. For the purposes of this rule:

(a) “Continuing offense” or “continuing violation” means violation of a code, rule or law on one or more additional days after having been notified of the violation or ordered to correct the act, or the failure to act. A continuing violation is subject to a civil penalty each day the violation continues after notification.

(b) A “directive” includes, but is not limited to, a notice or warning, citation, order, consent decree or settlement agreement, rule, law, code requirement, or agency interpretation.

(c) “Pattern of violation” means two or more prior violations during a five-year period of any provision of ORS Chapter 446, 447, 455, 460, 479, 480, or 693, or the state building code as defined in ORS 455.010, whether or not a penalty was assessed. A pattern of violation is calculated within a five-year period from the date of the latest violation.

(3) A licensed person or contractor who performs an act resulting in an unsafe installation or a health and safety hazard, structural or financial damage, performs or allows another to perform work requiring a license without an appropriate license, violates a previous directive, or exhibits a pattern of violation may have their license, registration or certificate conditioned, suspended, or revoked.

(4) Civil penalties may be assessed by a board, the Director, or a board’s designee acting as agent for a board. A board or the Director may take into account any appropriate factors, including previous directives, in determining the penalty amount or conditions within an order. The statutorily defined maximum penalty may only be assessed upon a finding of a pattern of violation.

(5) Civil penalties may be assessed in addition to, or in lieu of, the conditioning, suspension, or revocation of a license, certificate of competency, or similar authority issued by the Director.

(6) The Director may, subject to approval of a board, develop a penalty matrix for the board’s use to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.

(7) If a dispute concerning the application of the state building code as defined in ORS 455.010 is appealed to a local appeals board, to a board under ORS 455.690 or to the program chief under ORS 455.475:

(a) A civil penalty that is being appealed, may be stayed until after resolution of the appeal or interpretation. If corrections are necessary, a civil penalty may be stayed for 30 calendar days or the time frame established in the appeal or in the interpretation process.

(b) An administrative appeal will not stay civil penalties when they were assessed for failure to obtain a permit unless the appeal involves determining whether a permit was necessary.

(c) The person seeking the appeal or interpretation has the obligation to notify the Director of the appeal for the purpose of granting a stay of the civil penalty.

(8) Violations of ORS Chapters 446, 447, and 479 and ORS 455.020(2) and 455.610, wherein defects are noted by an inspector in an element of assembly or construction, shall not be considered a violation for the purposes of this section if the violation is corrected and an inspection

request made in 20 calendar days unless extended in writing by the building official.

(9) The Building Codes Division shall forward a copy of final orders to the Construction Contractors Board.

Stat. Auth.: ORS 446.995 & 455.895

Stats. Implemented: ORS 446.995 & 455.895

Hist.: BCD 35-2002, f. 12-31-02, cert. ef. 1-1-03; BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 22-2008, f. 9-30-08, cert. ef. 10-1-08; BCD 9-2010(Temp), f. & cert. ef. 7-1-10 thru 9-30-10

Rule Caption: Housekeeping amendments to implement a certification renewal process as required by House Bill 3462 (2009).

Adm. Order No.: BCD 10-2010

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 918-281-0020, 918-695-0400

Subject: These rules are necessary housekeeping changes to the division’s rules as a result of the passage of House Bill 3462 during the 2009 legislative session. OAR Chapter 918, Division 98 rules were noticed and amended to require an Oregon Inspector Certification (OIC) for all building officials, inspectors, and plan reviewers and renewal of that certification every three years. Division 98 rules lay out the application requirements and fees for obtaining or renewing an OIC. These rules update references to electrical and plumbing inspectors in divisions 281 and 695 to agree with amendments made to chapter 918, division 98 but were not included in the hearing notice for the hearing held on December 19, 2009.

Rules Coordinator: Dolores Wagner—(503) 373-1258

918-281-0020

Electrical Specialty Code Inspector Certification

(1) Scope: An Electrical Specialty Code inspector:

(a) Inspects electrical installations regulated by the **Oregon Electrical Specialty Code**;

(b) Inspects electrical installations regulated by the **Oregon Residential Specialty Code**; and

(c) May do electrical plan reviews as provided in OAR 918-311-0040.

(2) Qualifications: To qualify for the certification, the individual must have the following training or experience or both:

(a) Four years experience as a licensed general journeyman electrician and a valid Oregon general supervising electrician license;

(b) A four-year Bachelor of Science degree in electrical engineering, plus three years approved experience in design, inspection, or supervision of installations covered by the National Electrical Code or **Oregon Electrical Specialty Code**; or

(c) Equivalent experience or qualifications approved by the board.

(3) Application for Certification: A person seeking certification under this rule must apply for an Oregon Code Certification as provided in OAR 918-098-1025.

(4) All applicants must pass a board-approved examination with a minimum grade of 75 percent covering:

(a) The **Oregon Electrical Specialty Code** and electrical provisions of the **Oregon Residential Specialty Code**; and

(b) Electrical theory, design, installation, and materials.

(5) A person who is certified under this rule must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing electrical inspections or plan reviews.

(6) Persons qualifying under subsection (2)(b) or (c) of this rule must pass the Oregon general supervising electrician license examination with a minimum grade of 75 percent. An Oregon general supervising electrician license may not be issued to applicants under these subsections.

(7) For purposes of this rule, one year of experience equals 2,000 hours.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 10-2010, f. & cert. ef. 7-1-10

918-695-0400

Rules Establishing Certification for Plumbing Inspectors

(1) Scope. To promote effective and uniform enforcement of the **Oregon Plumbing Specialty Code** by improving the competence of the

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plumbing inspectors, this rule establishes minimum training and experience qualifications to make inspections for compliance with the **Oregon Plumbing Specialty Code**.

(2) A plumbing inspector:

(a) Inspects plumbing installations regulated by the Oregon Plumbing Specialty Code;

(b) Inspects plumbing installations regulated by the Oregon Residential Specialty Code; and

(c) May do plumbing plan reviews as provided in OAR 918-780-0040.

(3) **Limits on Municipalities.** Nothing in the rules prohibits a local government from establishing additional requirements in the selection and hiring of plumbing inspectors. Nothing in OAR chapter 918, divisions 750 to 785 is intended to dictate the internal administrative organization of a city or county or to limit or otherwise affect the authority of a municipality to dismiss or suspend an inspector.

(4) Plumbing inspectors must meet continuing education requirements established by the division under OAR 918-098-1450.

(5) **Application for Certification.** A person seeking certification under this rule must apply for an Oregon Code Certification as provided in OAR 918-098-1025.

(6) **Qualifications.** An applicant will be certified as a plumbing inspector under this rule if the following minimum qualifications are met:

(a) Experience and Training:

(A) 3 years of employment and experience as a Journeyman Plumber, with an Oregon Journeyman Plumber's license or its equivalent;

(B) A degree in mechanical engineering or certified professional registration with 2 years of work experience in plumbing design, installation, or inspection;

(C) 4 years of work experience in the inspection of plumbing installations of which at least 2 years is of commercial, industrial, and multi-family structures, or if the 4 years of work experience is in the inspection of residential installations, the completion of a division-approved plumbing inspector training program; or

(D) Experience and training equivalent to paragraphs (A), (B), and (C) of this subsection; or

(E) Persons certified as Oregon one and two family dwelling plumbing inspectors as of April 1, 1998 and completing five years of plumbing inspection experience are considered qualified to sit for examinations as a plumbing inspector.

(b) **Examination:** Passing a board-approved examination on the **Oregon Plumbing Specialty Code** covering plumbing theory, inspection techniques, communication skills, public relations, design, installation, statutory rules, authority, and materials.

(7) **Training:**

(a) Upon application, the division may examine and evaluate any program or facility established by a municipality or educational institution for the training of plumbing inspectors.

(b) If the division finds that a training program meets the minimum requirements established pursuant to this rule, the division shall, in writing, certify the training program as qualified for such time and conditions as the division may prescribe. An individual complies with any minimum requirement for plumbing inspector established pursuant to classification and requirements in this rule after satisfactorily completing a training program certified under this rule.

(8) A person issued a plumbing inspector certification or a limited plumbing inspector building sewers certification under this rule must also possess a valid Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing plumbing inspections or plan reviews.

(9) **Special Certification:**

(a) **Limited Certification.** The division, with board approval, may issue a limited certification for special types of inspections. Such limited certification will only be issued after the applicant passes an appropriate test of knowledge and ability;

(b) **Limited Plumbing Inspector — Building Sewers.** Limited certification for plumbing inspection of building sewers from five feet outside the building to the disposal terminal or connection with a main sewer line may be issued. To be certified, an applicant must have the following qualifications:

(A) A Journeyman Plumber License;

(B) Two years' experience in sewer design, installation, or inspection; or

(C) Experience and training equivalent to paragraph (A) or (B) of this subsection approved by the board; and

(D) Passing a board-approved examination on code, materials, and installation practices for building sewers and sewers.

(10) For purposes of this rule, one year of experience is equal to 2,000 hours.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 455.720

Stats. Implemented: ORS 455.720

Hist.: DC 39, f. 1-6-75, ef. 2-1-75; DC 79, f. 6-16-76, ef. 8-1-76; DC 102, f. & ef. 11-1-77; DC 1-1979, f. & ef. 1-5-79; DC 5-1979(Temp), f. & ef. 3-5-79; DC 9-1979, f. & ef. 6-8-79; DC 1-1983, f. & ef. 1-3-83; DC 6-1985, f. & ef. 2-8-85; Renumbered from 814-021-0109; BCA 14-1992, f. 6-29-92, cert. ef. 7-1-92; BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98, Renumbered from 918-750-0050; BCD 21-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 22-2000, f. 9-19-00, cert. ef. 10-1-00; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 4-2006, f. 3-31-06, cert. ef. 4-1-06; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 10-2010, f. & cert. ef. 7-1-10

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

Rule Caption: Biennial Adjustment to Securities Fees; IARD Licensing Investment Advisers.

Adm. Order No.: FCS 8-2010

Filed with Sec. of State: 6-22-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 5-1-2010

Rules Amended: 441-049-1001, 441-175-0002, 441-175-0100, 441-175-0165

Subject: Based on analysis of securities fees in other states, the amendments to these rules impact the filing fees for unit investment trusts, broker-dealers, and broker-dealer salespersons. For unit investment trusts, the initial notice fee increases from \$350 to \$500 per portfolio, and the renewal fee increases from \$350 to \$500 per portfolio. For a broker-dealer, the renewal license fee increases from \$200 to \$250. For a broker-dealer salesperson, the initial license fee increases from \$50 to \$55. Oregon law allows the Director of Consumer and Business Services to establish procedures for licensing investment advisers and to coordinate licensing with any national registration, licensing or notice filing system. The amendment to the application procedures for licensing state investment advisers streamlines the licensing process by requiring applicants to apply for an Oregon license through the Investment Adviser Registration Depository (IARD), an online database that the Financial Industry Regulatory Authority ("FINRA") administers and eliminates paper filing. **Rules Coordinator:** Shelley Greiner—(503) 947-7484

441-049-1001

Fees for Federal Covered Securities Notice Filings

Pursuant to ORS 59.049, for new filings received on or after July 1, 2010 or renewal filings effective on or after July 1, 2010, the Director sets the following fees for notice filings for federal covered securities:

(1) For an investment company, other than a unit investment trust, an initial and renewal notice filing fee of \$500 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(2) For a unit investment trust notice filing, an initial fee of \$500 per portfolio and a renewal fee of \$500 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(3) For a notice filing for offerings to qualified purchasers, or of federally exempt securities or federally exempt transactions pursuant to section 18(b)(3) or (4), other than section 18(b)(4)(D), of the Securities Act of 1933, as amended, a fee of \$200. No renewal notice filing or fee is required.

(4) For a Regulation D Rule 506 offering notice filing, a fee of \$250. No renewal notice filing or fee is required.

Stat. Auth.: ORS 59.049

Stats. Implemented: ORS 59.049

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 3-2006, f. & cert. ef. 5-4-06; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10

441-175-0002

Fees for Licensing or Notice Filing of Firms and Individuals

Pursuant to ORS 59.175, the Director sets the following fees for licensing or notice filing of firms and individuals:

(1) For a broker-dealer, an initial license fee of \$250 and a renewal license fee of \$250;

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(2) For a state investment adviser, an initial license fee of \$200 and a renewal license fee of \$200;

(3) For a federal covered investment adviser, an initial notice filing fee of \$200 and a renewal notice filing fee of \$200;

(4) For a broker-dealer salesperson, an initial license fee of \$55 and a renewal license fee of \$50;

(5) For an investment adviser representative, an initial license fee of \$50 and a renewal license fee of \$50;

(6) For an agent of an issuer, an initial license fee of \$50 and a renewal license fee of \$50; and

(7) For a filing for use of a trade name or an assumed business name, a one time fee of \$50.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10

441-175-0100

Applications for Licensing of Investment Advisers

(1) An applicant for licensing as a state investment adviser must apply through IARD.

(2) An applicant must submit:

(a) To the IARD:

(A) A completed Form ADV, including Parts 1 and 2 of Form ADV;

(B) An investment adviser licensing fee as required by OAR 441-175-0002;

(C) At least one completed Form U-4 (Uniform Application for Securities Industry Registration or Transfer available from the Securities Section). All licensed state investment advisers must have at least one representative licensed continuously throughout the licensing period of the investment adviser; and

(D) A licensing fee for each investment adviser representative as required by OAR 441-175-0002.

(b) To the Director:

(A) A surety bond or letter of credit pursuant to OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(B) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Director within 30 days following the change;

(C) A copy of any proposed client contracts if the applicant is an Oregon based state investment adviser; and

(D) Any form or portion of any form which cannot be submitted through IARD.

(3) An Oregon based investment adviser applicant who has custody or possession of a client's funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client must file with the Director financial statements as defined in OAR 441-011-0040 and prepared by an "independent accountant" as defined in OAR 441-175-0010(6) as follows:

(a) If the applicant has been in operation for more than two years, and the application is made less than 90 days after the end of the applicant's fiscal year, the applicant must provide financial statement for the two most recent fiscal years, not including the most recently completed fiscal year.

(b) If the applicant has been in operation for less than two years, the applicant must provide financial statements for the periods of operation.

(c) If the year-end financial statements are dated more than 90 days from the date of the completed application, the applicant must provide interim financial statements that were completed within 90 days of the application.

(4) All applicants must comply with the provisions of OAR 441-175-0070.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1) & 59.205(2)

Hist.: FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067.4; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10

441-175-0165

Renewal of the Licenses of Non-NASD Broker-Dealers or State Investment Advisers, and Their Salespersons or Investment Adviser Representatives

(1) Effective Date of Licenses. The licenses of a non-FINRA broker-dealer or state investment adviser (employer), and the licenses of their salespersons or investment adviser representatives, expire 12 months following the date of original licensing or last renewal of the license of the

employer unless otherwise renewed pursuant to this rule. Provided, however, that any license of a state investment adviser or investment adviser representative who has filed an application through IARD will expire on December 31 of each year unless renewed through IARD.

(2) Timely Application. In order to prevent automatic expiration of an order of licensing or renewal, an applicant for renewal should file a complete application no less than 30 days prior to the expiration date of the current order of licensing or renewal. Applications not timely filed will be processed, but no assurance can be given that an order of renewal will be issued prior to expiration of a previous order.

(3) Incomplete Applications. Incomplete applications will not be processed.

(4) IARD License Renewal. To renew a license, a state or federal covered investment adviser which has previously licensed through IARD must submit the following items to the IARD, to the extent the IARD is capable of accepting those items, and otherwise to the Director:

(a) An employer renewal fee as set in OAR 441-175-0002;

(b) A renewal fee as set in OAR 441-175-0002 for each licensed investment adviser representative;

(c) Any amendments to Form ADV or Form U-4, pursuant to OAR 441-175-0105, which have not previously been submitted.

(5) Non-FINRA License Renewal. To renew a license, a non-FINRA broker-dealer must submit the following items to the Director:

(a) A non-FINRA broker-dealer renewal form;

(b) An amended Form BD or ADV, pursuant to OAR 441-175-0105, if there have been material changes since the most recent filing of the appropriate form;

(c) The name of the person who is the supervisor of the employer's operations. When a new supervisor is appointed, the employer must file the change with the Director;

(d) A salesperson renewal form for each salesperson to be renewed, signed by both the salesperson and the employer;

(e) An employer renewal fee as set in OAR 441-175-0002, except as provided in section (7) of this rule;

(f) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed, except as provided in section (7) of this rule; and

(6) Financial Information. If the applicant for renewal is an Oregon based state investment adviser, the renewal applicant must submit the following financial information:

(a) If the investment adviser has or will have custody of client funds or securities, or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, the latest annual balance sheet which must be audited by an "independent accountant," as defined pursuant to OAR 441-175-0010(6);

(b) For all other investment advisers, the latest annual balance sheet which may be audited, reviewed or compiled, prepared by an "independent accountant," as defined pursuant to OAR 441-175-0010(6); and

(c) If the latest annual balance sheet and statement of income or operations is not current within 90 days of renewal, an interim balance sheet must be submitted.

(7) Prorated Renewal Fee. Any federal or state investment adviser transitioning onto IARD shall pay a prorated renewal fee for the employer and any previously licensed investment adviser representative in the year of the transition calculated from the month the existing notice filing or license expires, as shown in the following table: [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1), 59.185 & 59.205

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10

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

Rule Caption: Adopt changes in Division 4, Agriculture.

Adm. Order No.: OSHA 4-2010

Filed with Sec. of State: 7-8-2010

Certified to be Effective: 1-1-11

Notice Publication Date: 3-1-2010

Rules Adopted: 437-004-0251

Rules Amended: 437-004-0002, 437-004-0003, 437-004-0099, 437-004-0240, 437-004-1305

ADMINISTRATIVE RULES

Rules Repealed: 437-004-0004, 437-004-0250

Subject: These changes result from legislation, input from the regulated community and input from Oregon OSHA staff.

Changes to **Subdivision 4/A, Agriculture/General Subjects**, at OAR 437-004-0002, Scope, cross-reference and clarify the SIC and NAICS codes to which the Division 4 rules apply. One note specifies the criteria for classification of an employer under SIC 0723/NAICS 115114 (Crop Preparation Services for Market) as an agricultural employer (Division 4) or a general industry employer (Division 2). Another note, with SIC 0831/NAICS 113210 clarifies when “tree farms” are agricultural employers as opposed to Division 7/Forest Activities employers. A duplicate rule for adoption of the Worker Protection Standard (OAR 437-004-0004) was eliminated. In OAR 437-004-0099, General Standards, a requirement at (1)(b) was rewritten in plain language to read: “Keep all safeguards or devices operating properly and fully effective at providing the protection originally intended.” At (3), rules for inspecting workplaces, and at (4)(a), rules for investigating time-loss injuries and illnesses were cross-referenced with the numbering changes in 4/C Safety Committees and Safety Meetings. Current contact information is provided for the Wage and Hour Division of the Bureau of Labor and Industries in a note about “Employment of Minors.”

Changes in **Subdivision 4/C, Safety Awareness**, fulfill Oregon OSHA’s responsibility under a recent legislative mandate to require all Oregon employers, regardless of size, to have either a safety committee or to hold safety meetings.

The former safety committee rule, OAR 437-004-0250 is repealed on the effective date, January 1, 2011, and is being replaced with OAR 437-004-0251, Safety Committees and Safety Meetings, incorporating the changes required by the legislative mandate. At (1), the scope of the rule is defined as all agricultural employers with workers, excluding seasonal workers. All employers with workers can have a safety committee. The number of (nonseasonal) workers, both full-time and part-time, per location determine whether the employer also has the option of holding monthly safety meetings instead of having a safety committee. The General Requirements are found at (2); requirements for Safety Committees are listed within (3); and requirements for Safety Meetings are found within (4).

The special needs of agricultural employers are addressed by maintaining separate safety orientation requirements for employers of seasonal workers, as outlined in OAR 437-004-0240, Safety Orientation for Seasonal Workers. The March, 2010 proposal included a change to the definition of “seasonal worker” that would have limited the period of time that a worker could be considered “seasonal” to “three or fewer months in a calendar year.” The majority of commenters who expressed an opinion, either in writing during the comment period or in testimony at one of the two hearings, were opposed to revising the definition for a variety of reasons. The original definition was maintained in the final rule: Seasonal workers are “employed in a job tied to a certain time of year by an event or pattern and for not more than 10 months in a calendar year.” Additional notes were added to this section to cross reference and explain the minimum training and orientation requirements for seasonal workers who perform only “hand labor operations” as defined in the rule.

The March, 2010 proposal also included a requirement in OAR 437-004-0240 that the “provider of this basic safety awareness information must be able to understand and respond to worker’s questions.” Commenters at both hearings noted that this would have the effect of requiring all employers to have persons fluent in all the languages of all their employees as trainers. They felt that this would create a logistical problem, a financial hardship, and a potential legal liability. This language was removed from the final version.

The Division 4/C rules for employers of both seasonal and non-seasonal workers now specifically state – at OAR 437-004-0240(2)(b) and 437-004-0251(2)(b) – that safety awareness information must be communicated “in a manner that workers can understand.” Employers with employees who have language barriers must “include content that is either translated into the language

used to hire and supervise these employees or that is otherwise effectively conveyed, such as through visual media.” Commenters at both hearings recognized the importance of providing effective training but commented that it would take time and resources to put together effective multi-language or visual training materials.

Changes in **Subdivision 4/K, Agriculture/ Medical and First Aid**, at OAR 437-004-1305, are mostly stylistic, putting the existing requirements for first aid, emergency medical treatment, the emergency medical plan, and emergency eyewash and safety showers into clearer language. At (3) Medical treatment and services, the March, 2010 proposal included a requirement for employers to: (a) “assure the availability of emergency medical services for injured or sick employees” and (b) “promptly call the emergency services to provide treatment.” This revision concerned some commenters because it could be interpreted to mean that the employer must “call an ambulance” even for minor injuries. The final rule returns to the original wording: “Emergency medical services for injured or sick employees must be available and summoned in time to give appropriate treatment for the circumstances.” The original definition of “emergency medical service” is also restored in the final rule: “Emergency medical service is care by a medically trained person such as in a hospital, clinic, ambulance or rescue vehicle.”

The March, 2010 proposal to (5), Emergency eyewash and shower facilities, are rewritten for the final rule to address concerns by commenters. The final rule clarifies when eyewash, shower equipment, or both are required and defines the minimum standards for both plumbed (potable) and self-contained systems. In the final rule, employers must provide employees with an emergency eyewash, shower equipment, or both to decontaminate themselves, based on the hazard, when: “(A) Employees use a chemical substance that can cause corrosion or permanent tissue damage to the eyes or when the body may be exposed to quantities of materials which are either corrosive or toxic by skin absorption; or (B) Employees handle pesticide products labeled with the signal words “Danger” or “Danger/Poison” and with a first-aid section on the label that requires rinsing for 15–20 minutes for eye or skin exposure.”

Most of those commenting on this section focused on the use of pesticide products, and used the phrase “the label is the law” to express their belief that no additional requirements are necessary. Oregon OSHA has chosen to clarify when our eyewash and shower equipment requirements apply both in more general terms that apply to all chemical substances that may be present in the workplace and, for these types of products, based on what the pesticide label requires.

Decontamination systems are no longer linked to a fixed or mobile site but is related to the hazard. The employer may determine which type of equipment to use, whether plumbed, potable water systems or self-contained units, but each must meet the requirements in 437-004-1305(5)(b).

Based on comments received, Oregon OSHA is delaying the effective date to January 1, 2011, for all changes in this rulemaking.

Please visit OR-OSHA’s web site at www.orosha.org

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-004-0002

Scope

Standard Industrial Classifications — division 004, Agriculture, applies only to employers with the following Standard Industrial Classifications (SIC) or North American Industrial Classification system (NAICS) codes.

NOTE: If you don’t know your code, contact your Workers’ Compensation Insurance carrier.

SIC NAICS

01 111 — All Groups.

02 112 — All Groups.

0711 115112 — Soil Preparation Services.

0721 115112 — Crop Planting, Cultivating, and Protection.

0722 115113 — Crop Harvesting, Primarily by Machine.

0723 115114 — Crop Preparation Services for Market: Except Cotton Ginning.

NOTE: SIC 0723 (NAICS 115114), Division 4, Agriculture covers growers who:

(1) Buy farm products for resale to the general public. These products may be cleaned, sorted, graded, dried whole, bagged or packaged, but are not processed. Examples of processing include cutting, canning, freezing, pasteurizing and homogenizing.

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(2) Grow 51 percent or more of the sold crops themselves, but also buy farm products for resale to anyone other than the general public. These products may be cleaned, sorted, graded, dried whole, bagged, or packaged, but are not processed. Examples of processing include cutting, canning, freezing, pasteurizing and homogenizing.

0761 115115 — Farm Labor Contractors and Crew Leaders.

0762 115116 — Farm Management Services.

0811 111421 — Christmas Tree Growing and Harvest.

0831 113210 — Forest Nurseries and Gathering of Forest Products.

NOTE: Division 4, Agriculture, covers forest nursery employers growing:

(1) Seedlings for reforestation.

(2) Trees for purposes other than lumber, pulp, or other wood products.

Division 7, Forest Activities, covers employers:

(1) Growing trees for lumber, pulp, or other wood products.

(2) Gathering seeds, needles, bark, and other secondary forest products.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06;

OSHA 4-2010, f. 7-8-10, cert. ef. 1-1-11

437-004-0003

Exclusive Coverage

Division 4, Agriculture, and parts of division 1, General Administrative Rules, are the only Oregon OSHA standards that apply to employers in 437-004-0002. Employers in 437-004-0002 will not be cited from standards in division 2 or division 3, Construction, unless division 4 states they are applicable.

(1) The following parts of division 1 DO NOT apply to Agriculture. This division has language covering their subjects.

(2) 437-001-0760 Rules for all Workplaces. 437-004-0099 General Standards applies instead.

(3) 437-001-0765 Safety Committees and Safety Meetings. 437-004-0251 Safety Committees and Safety Meetings applies instead.

NOTE: ORS 654 (The Oregon Safe Employment Act) and specifically 654.010, commonly referred to as the General Duty Clause, applies to all places of employment in Oregon.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 4-2010, f. 7-8-10, cert. ef. 1-1-11

437-004-0099

General Standards

(1) Miscellaneous.

(a) Conspicuously post warning signs, danger signs, warning flags, warning lights, or similar devices where hazards not otherwise adequately guarded warrant their use.

(b) Keep all safeguards or devices operating properly and fully effective at providing the protection originally intended.

(c) Erect protective barriers or suitable guards when covers over openings are removed or excavations made in places accessible to workers or vehicles.

(d) Do not allow the use of intoxicating liquor or drugs on the job. Do not allow anyone to work with impaired ability to work safely.

(e) Do not allow horseplay, scuffling, practical jokes or any other similar activity.

(2) Supervision and competency.

(a) Require employees to demonstrate their ability to work safely.

(b) Provide enough supervision over employees to ensure and enforce compliance with safe operating procedures and practices.

NOTE: It is not the meaning of this rule to require a supervisor on every part of any operation, nor to prohibit workers from working alone.

(c) Take all reasonable means to require employees:

(A) To work and act in a safe and healthful manner;

(B) To work in compliance with all applicable safety and health rules;

(C) To use all means and methods, including but not limited to, ladders, scaffolds, guardrails, machine guards, safety belts and lifelines, necessary to work safely where employees are exposed to a hazard;

(D) Not to remove, displace, damage, destroy or carry off any safety device, guard, notice or warning provided for use in any employment or place of employment where safety and health rules require such use.

(d) Use a procedure, appropriate for the work, to check on the well-being of workers whose duties require them to work alone or in isolation. Instruct all workers about the procedure.

NOTE: A two-way system of signals, thoroughly understood by both parties or other form of two-way communication is acceptable. Motor noise is not acceptable as contact or as an indication of well-being.

(e) Employers must provide all health hazard control measures necessary to protect the employees' health from harmful or hazardous conditions and must maintain those control measures in good working order and assure their use.

(f) Employers must inform their employees about the known health hazards to which they are exposed, the measures taken for the prevention

and control of those hazards, and the proper methods for using the control measures.

(3) Inspections. A competent person or persons must inspect every place of employment at least quarterly. OAR 437-004-0251 has other requirements related to these inspections.

(4) Investigations.

(a) The employer must investigate every work-related lost time injury. The object of the investigation is to determine how to prevent recurrence. OAR 437-004-0251 has other requirements related to these investigations.

NOTE: As mentioned above, "lost time injury" is the same as the ORS 656.005(7)(c) definition of "disabling compensable injury." That is: an injury that entitles the worker to compensation for disability or death. To fall into this category the employee must miss three consecutive calendar days beginning with the day the worker first loses time or wages from work as a result of the compensable injury. This includes week-ends and holidays when they might normally be off.

(b) At the request of authorized OR-OSHA representatives, you or your superintendents, supervisors and employees must furnish all evidence and names of known witnesses to an accident.

(c) Employees in charge of work are agents of the employer in the discharge of their authorized duties, and are always responsible for:

(A) The safe performance of the work under their supervision; and

(B) The safe conduct of the crew under their supervision; and

(C) The safety of all workers under their supervision.

(5) Extraordinary hazards. When conditions arise that cause unusual or extraordinary hazards to workers, take additional means and precautions to protect workers or to control the hazardous exposure. If you cannot make the operation reasonably safe, stop work while the abnormal conditions exist or until the work is safe.

(6) Signals and signal systems.

(a) Give control signals by only one person at a time.

(A) When given, make signals clear and distinct.

(B) The person receiving the signals must understand their meaning before taking action.

(b) Act immediately on emergency stop signals from whatever source.

(c) Do not throw any type of material that can produce injury, such as rocks, wooden or metal objects, etc., as a signal.

(d) Do not give signals for the movement of materials or equipment until all persons who might be in danger by the movement are in the clear. Employment of Minors.

NOTE: Information on current regulations about the employment of minors is available from the local office of the Oregon Bureau of Labor and Industries, or by writing to: Wage and Hour Division, Oregon Bureau of Labor, 800 NE Oregon Street, Suite 1045, Portland, OR 97232. Phone: 971-673-0761. Fax: 971-673-0769.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06; OSHA 4-2010, f. 7-8-10, cert. ef. 1-1-11

437-004-0240

Safety Orientation for Seasonal Workers

Definitions:

(1) Hand-labor operations, (as defined in OAR 437-004-1110(3) and reprinted here for ease of the reader) means agricultural activities or agricultural operations performed by hand or with hand tools, including:

(a) Hand-cultivation, hand-weeding, hand-planting, and hand-harvesting of vegetables, nuts, fruits, seedlings, or other crops (including mushrooms);

(b) Hand packing or sorting, whether done on the ground, on a moving machine, or in a temporary packing shed in the field.

(2) Seasonal workers are employed in a job tied to a certain time of year by an event or pattern and for not more than 10 months in a calendar year.

NOTE: The following are only minimum requirements. Other parts of the agriculture standard require training for certain types of work in addition to these general orientation requirements.

(3) Application: This applies to agricultural employers with seasonal workers.

(4) Basic Safety Awareness Requirements.

(a) You must provide seasonal workers with at least the following information:

At their orientation meeting before beginning work for the first time, and; When work conditions or locations change in a way that could reasonably affect their safety or health.

(A) Safety and health rules for their work.

(B) Procedures for workers to contact supervisors or managers in case of accident, illness, or problems related to safety or health.

(C) Procedures for treating injured or sick workers and for summoning emergency assistance.

(D) The location of posted safety and health information.

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(b) If you have employees with language barriers, you must communicate safety awareness information in a manner that workers can understand. Include content that is either translated into the language used to hire and supervise these employees or that is otherwise effectively conveyed, such as through visual media.

NOTE: Division 4/Z, Hazard Communication, OAR 437-004-9800(7)(d), requires employers to give a copy of the Oregon OSHA's *Safe Practices When Working Around Hazardous Agricultural Chemicals* (#1951) to every employee. This publication provides an outline of the information that agricultural employers must provide during the initial training for workers under both the hazard communication rules and the pesticide worker protection standard (WPS) as covered in Division 4/W, 170.130(c). Contact Oregon OSHA for copies of this publication and information about available language formats.

(5) You must provide the initial WPS training if pesticide products labeled with "agricultural use requirements" have been used at the place of employment during the 30 days prior to the worker's first day of employment or will be used during the worker's period of employment. Additional WPS training requirements apply on the sixth day of employment, and in other work situations that fall under the definition of "pesticide handler." See Division 4/W for these additional training requirements.

(6) For seasonal workers doing hand-labor operations only, you must provide all of the following to meet the initial training requirements under the WPS, this safety awareness orientation rule, and the hazard communication rule.

The training outlined in *Safe Practices When Working Around Hazardous Agricultural Chemicals* publication.

The basic safety awareness requirements information in OAR 437-004-0240.

Access to material safety data sheet information for the hazardous chemicals to which they reasonably may be exposed.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1999, f. & cert. ef. 4-30-99; OSHA 9-2006, f. & cert. ef. 9-22-06; OSHA 4-2010, f. 7-8-10, cert. ef. 1-1-11

437-004-0251

Safety Committees and Safety Meetings

Definitions:

Management — includes all supervisors and persons who regularly exercise direction and control over workers.

Workers — for the purposes of determining the need for a safety committee, include both full and part-time employees.

(1) Purpose. The purpose of safety committees and safety meetings is to bring workers and management together in a non-adversarial, cooperative effort to promote safety and health in each workplace. A safety committee assists the employer by establishing procedures, performing inspections, evaluating safety and health programs, and recommending changes in workplace conditions and practices. By participating in safety meetings, workers and management work together to recognize hazards and to make safety and health improvements at the workplace.

(2) Application: This applies to agriculture employers with workers other than seasonal workers covered in OAR 437-004-0240.

(3) General Requirements.

(a) You must either have an effective safety committee or hold effective safety meetings. (See Table 1.)

(b) If you have employees with language barriers, you must communicate safety awareness information in a manner that workers can understand. Include content that is either translated into the language used to hire and supervise these employees or that is otherwise effectively conveyed, such as through visual media.

(c) If you are a labor contractor, you must have a committee or meetings based on the number of employees that you direct and control.

NOTE: Nothing in these rules prevents you from having seasonal workers attend safety meetings.

Table 1

IF:	You can have a safety committee	You can have safety meetings instead of a committee
You have 10 or fewer workers at a location:	Yes	Yes
You have more than 10 workers at a location:	Yes	No
You have satellite or auxiliary worksites with 10 or fewer workers at each location:	Yes	Yes

(4) Safety Committees.

(a) Management's Duties.

(A) Pay members at their regular rate of pay for attending the meetings, trainings, inspections, and other functions required by this rule.

(B) Provide committee members with timely access to these rules (OAR 437-004-0251) and to all Oregon OSHA standards that apply to their work.

(C) Respond to safety committee recommendations within a reasonable time.

(b) Effective Safety Committees. You must ensure that the committee produces at least the following results:

(A) Employees are aware of the committee, who is on it, when it meets and how information is shared between management and workers.

(B) Employees are aware of their right to have their safety and health concerns heard by the committee.

(C) Employees know the employer's method or system for reporting safety and health concerns, incidents, and accidents.

(c) Centralized Safety Committee. You may choose a centralized safety committee if all of the following apply:

(A) You have more than one geographic employment location.

(B) The locations are close enough to ensure that a joint committee meets the requirements in OAR 437-004-0251(2)(b), Effective Safety Committees.

(C) The joint committee represents the safety and health concerns of all employees at all locations.

(d) Membership and Training.

(A) Have at least two members on your committee if you have 20 or fewer workers. Have at least four members if you have more than 20 workers. Members should represent the major activities of your business.

(B) Have an equal number of employer-selected members and worker-elected or volunteer members. If both parties agree, the committee may have more worker-elected or volunteer members.

NOTE: Management can select a supervisor or other employee to represent them.

Workers can volunteer or elect any peer as a representative.

(C) Provide training on the purpose and operation of the safety committee, in hazard identification, and in the principles of accident investigation.

NOTE: Oregon OSHA provides no-cost, safety committee-related training available through the web site at www.orosha.org/education.html.

(D) Have members serve a minimum of one year, when possible.

(E) Have a majority agree on a chairperson.

(e) Safety Committee Functions. Ensure that the committee does all of the following:

(A) Meets at least monthly, except in those months when quarterly inspections occur.

(B) Establishes procedures for doing the quarterly safety and health inspections required by OAR 437-004-0099(3). Persons performing inspections must be trained in hazard identification.

(C) Reviews all quarterly safety and health inspection reports and makes recommendations to eliminate identified hazards.

(D) Works with management to establish procedures for investigating all safety incidents, accidents, work-related illnesses, and fatalities. Persons investigating these events must be trained in the principles of accident investigation.

NOTE: OAR 437-004-0099(4) requires agriculture employers to investigate every work-related lost-time injury.

(E) Evaluates all investigation reports and makes recommendations for ways to prevent recurrence.

(F) Sets guidelines for the training of safety committee members.

(G) Evaluates the accident and illness prevention programs at the workplace.

(f) Safety Committee Records.

(A) Ensure that records have at least the following information.

(i) Meeting date.

(ii) Names of those attending.

(iii) All reports, inspections, evaluations, recommendations, management responses, and other safety and health-related items brought before the committee.

(iv) The date that management agrees to respond to specific recommendations.

(B) Make these records available to all employees and to Oregon OSHA representatives, upon request.

(C) Maintain these records for at least three years.

(5) Safety Meetings

(a) Effective Safety Meetings. You must ensure that safety meetings produce at least the following results:

(A) Employees are aware of safety meetings, when and where they are held, and how information is shared between management and workers.

(B) Employees know that they have a right to have their safety and health concerns heard and questions answered at safety meetings.

(C) Employees know the employer's method or system for reporting safety and health concerns, incidents, and accidents.

(b) Meeting Requirements. Safety meetings must have all of the following characteristics:

(A) Include all available employees.

(B) Include at least one employer representative.

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(C) Be on company time with attendees paid at their regular rate of pay.

NOTE: If you have questions about this, contact the Oregon Bureau of Labor and Industries.

(D) Occur at least monthly.

(c) Meeting content. Safety meetings must include the following:

(A) Information about safety and health issues relevant to the workplace.

(B) Reports from quarterly workplace safety inspections and from investigations of any work-related, time-lost injuries, including suggested corrective measures.

NOTE: OAR 437-004-0099(3) requires a competent person to inspect the agricultural workplace at least quarterly. OAR 437-004-0099(4) requires agricultural employers to investigate every work-related lost-time injury. See Division 4/A for details.

(C) Opportunities for employees to ask questions, bring up safety and health concerns, and make suggestions.

(D) Information that is presented in a manner that can be understood by all employees.

(d) Meeting Records.

(A) Meeting notes must include the following information:

(i) Meeting date.

(ii) Names of those attending.

(iii) Topics discussed.

(B) Keep the records for at least 3 years.

(C) Make the records available to your employees and to Oregon

OSHA representatives, upon request.

NOTE: If all your employees attend a safety meeting, you are only required to record the meeting date and a list of the employees attending.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-2010, f. 7-8-10, cert. ef. 1-1-11

437-004-1305

Medical Services and First Aid

(1) Definitions.

Emergency medical service is care by a medically trained person such as in a hospital, clinic, ambulance or rescue vehicle.

Qualified first aid person has evidence to show valid first-aid and CPR training within the last two years.

(2) First aid supplies.

(a) Provide first-aid supplies based on the types of injuries that could occur at the place of employment. The first-aid supplies must be immediately available to all workers on all shifts when needed. Do not lock up or otherwise restrict access to first-aid supplies.

(b) Protect first-aid supplies from damage, deterioration, or contamination. Clearly mark containers. First-aid containers may be sealed to protect the contents from contamination.

NOTE: Supplies such as nitrile gloves and a mouth barrier device are personal protective equipment covered by Division 4/I, Personal Protective Equipment.

(3) Medical treatment and services. Emergency medical services for injured or sick employees must be available and summoned in time to give appropriate treatment for the circumstances.

NOTE: These services can be by outside sources such as the local 911 response system or by employees who are qualified first-aid persons.

(4) Emergency medical plan.

(a) Determine the appropriate type of medical service for each place of employment. You must do a survey and develop an emergency medical plan. You must evaluate these areas:

(A) Determine the types of injuries and illnesses that are likely to occur at the worksite.

(B) Contact the local emergency response system and get information about their ability to handle these types of emergencies and their response time. Consider things such as nearness of the responding teams, traffic, equipment, average response times, and whether the system is staffed by volunteers or full-time people.

(C) Based on this information, decide whether the local response system can handle your situation or whether you need your own qualified first-aid persons.

(D) Train all employees about the medical plan and their responsibilities during an emergency.

(b) If the local response system is adequate, then the minimum emergency medical plan must contain the emergency phone number and emergency action instructions for employees in case of an injury or illness. Post this emergency medical plan where employees gather or are most likely to read it.

(c) If the response system is not adequate to handle your potential injuries or illnesses, then your plan must also contain clear and specific emergency action instructions for employees in case of injury or illness. The plan of action must have:

(A) The names, locations, and phone numbers of people trained and authorized to give first aid and other treatment.

(B) Any special instructions about communications like two-way radios, telephones or other provisions for emergency communication to contact the emergency medical services.

(C) A plan for transportation to the ambulance or nearest suitable medical facility.

(5) Emergency eyewash, shower equipment, or both.

(a) Based on the hazard, provide employees with an emergency eyewash, shower, or both to decontaminate themselves when one of the following applies:

(A) Employees use a chemical substance that can cause corrosion or permanent tissue damage to the eyes or when areas of the body may be exposed to quantities of materials that are either corrosive or toxic by skin absorption.

(B) Employees handle pesticide products labeled Danger or Danger/Poison, and with a first-aid section on the label that requires rinsing for 15-20 minutes for eye or skin exposure.

NOTE: OAR 437-004-1305(5) does not apply to eye flushing supplies required for early entry workers covered under 170.112(c)(8) or agriculture field workers covered under 170.150 of the pesticide Worker Protection Standard in Division 4, Subdivision W.

(b) Emergency eyewashes or showers, whether plumbed potable water systems or self-contained units, must meet the following requirements:

(A) Locate it so exposed employees can reach it and begin treatment in 10 seconds or less. The path must be unobstructed and cannot require the opening of doors or passage through obstacles unless other employees are always present to help the exposed employee.

(B) Install the equipment according to the manufacturer's instructions.

(C) Valves must stay open once activated, without the use of hands.

(D) Follow manufacturer's instructions for use and inspection.

(E) Fluid quality and temperature must be appropriate for the anticipated types of decontamination treatment.

(F) Flow and pressure must provide the needed treatment without risking injury to the employee.

(G) If the eyewash or shower could freeze, take protective measures to prevent this from occurring.

(c) If the product label or material safety data sheet requires specific decontaminants or procedures, you must provide them in addition to the eyewash or shower. Certain substances like acids, chlorine and anhydrous ammonia require special treatment.

NOTE: ANSI Z358 has information about the performance requirements for eyewashes and showers.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 9-2006, f. & cert. ef. 9-22-06; OSHA 4-2010, f. 7-8-10, cert. ef. 1-1-11

Department of Corrections Chapter 291

Rule Caption: Volunteers and Student Interns for the Department of Corrections.

Adm. Order No.: DOC 8-2010(Temp)

Filed with Sec. of State: 7-14-2010

Certified to be Effective: 7-14-10 thru 1-10-11

Notice Publication Date:

Rules Amended: 291-015-0100, 291-015-0105, 291-015-0110, 291-015-0115, 291-015-0120, 291-015-0125, 291-015-0135

Rules Suspended: 291-015-0130, 291-015-0140, 291-015-0145, 291-015-0150

Subject: These temporary rule modifications are necessary to update the organizational and structural changes within the department's volunteer program, and place the procedural detail in a department policy. The operational procedures are better placed in department policy rather than administrative rule because they direct the internal management of the program.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-015-0100

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

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(2) Purpose: The purpose of this rule is to establish policy that will help the department fulfill its volunteer goals:

(a) To foster a respected and recognized volunteer community of appropriate size and quality that is capable of serving the rehabilitative, religious/spiritual, and other correctional needs of inmates from incarceration to reentry back to the community; and

(b) Provide support to staff in furtherance of the mission of the department.

(3) Policy:

(a) It is the policy of the Department of Corrections to utilize volunteers and student interns with appropriate training, guidance, and supervision as a means to enhance programs and further the mission of the department.

(b) Volunteers serve at the pleasure of the department and are not considered employees.

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

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

Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

291-015-0105

Definitions

(1) Affiliation: An organization; such as a school, college, university, agency, faith group, spiritual group, 12-step program, non-profit corporation or foundation, or similar type organizations, that has defined structure and recognition as a legitimate organization in the community.

(2) Department Supervisor: A Department of Corrections employee who is responsible for the activities and programs provided by volunteers.

(3) Endorser: An official of the volunteer's affiliation who has the authority to certify that the volunteer is endorsed by that group to provide services for inmates. If the volunteer is the endorser for his/her affiliation, another official of the affiliation must provide the endorsement.

(4) Functional Unit: Any organizational component within the department responsible for the delivery of services or coordination of programs.

(5) Functional Unit Manager: Any person within the Department of Corrections who reports to the Director, Deputy Director, an Assistant Director, or administrator and has responsibility for the delivery of services or coordination of program operations.

(6) LEADS: Law Enforcement Data System.

(7) Local State Director: A person with the Department of Corrections who reports to the Chief of Community Corrections and has responsibility for managing a state community corrections office with a particular county.

(8) Programs: Activities such as religious services, education classes, self-help meetings, treatment programs, and clubs (if any) that are established solely at the discretion of the department to meet its needs and those of the inmates.

(9) Program Manager: A Religious Services management employee assigned to oversee, manage, and conduct the volunteer program of the department.

(10) Student Intern/Practicum: An approved student in a college or university who, as part of an academic program, donates time and effort to enhance the mission, activities and programs of the department and to further his/her professional development. Student interns may be stipend or non-stipend. For purposes of these rules, wherever the term "volunteer" is used, it shall also apply to student interns.

(11) Volunteer: An approved person who donates time, knowledge, skills, and effort to enhance the mission, activities and programs of 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.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

291-015-0110

Program Supervision

(1) Religious Services is responsible for the establishment, development and management of the overall structure and operation of the volunteer program for volunteers working inside department facilities or assisting with transition from prison to the community.

(2) The local state director or designee will designate a volunteer coordinator to oversee volunteers and student interns for Community Corrections.

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

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

Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

291-015-0115

Recruitment

(1) Prospective volunteers who best meet program needs will be recruited from all ethnic, cultural, gender and economic segments of the community.

(2) Recruitment will be based on the needs of inmates, offenders, functional units, and the availability of staff to supervise volunteers.

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

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

Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

291-015-0120

Selection

(1) A prospective volunteer must complete an application and undergo a background check. The department holds the ultimate authority to approve or deny a volunteer application. A volunteer must be:

(a) A USA citizen, legal resident, or in the country on a valid visa.

(b) At least 18 years old, unless there will be no interaction between the volunteer and inmates.

(2) Security Clearance: The purpose of clearance is to ensure not only the safety and security of department facilities, but also to ensure that volunteers are appropriate role models for inmates and offenders. To become a volunteer, an individual must clear the following criteria:

(a) LEADS: To clear LEADS, the volunteer must have:

(A) No outstanding warrants or pending criminal charges.

(B) No misdemeanor convictions in the past two years. No felony convictions or incarcerations in the past five years, or two years for certain volunteer programs. The functional unit manager may on a case-by-case basis approve an individual with no felony convictions or incarcerations in the past three years.

(C) No convictions for introduction or supplying contraband as defined in ORS 162.185; or possession, control or delivery of an explosive device or substance; or assisting an inmate to escape or unlawful departure from a correctional facility, including attempt or conspiracy of any of the above.

(D) Current (less than a year old) LEADS clearance is required for all volunteers.

(b) Driving record: The volunteer may not have been convicted of Driving Under the Influence of Intoxicants (DUI) in the past two years or Driving While Suspended (DWS) in the last year. The number and type of other driving offenses or convictions may be considered in determining if the volunteer is a good role model for inmates and offenders.

(c) Persons with Prior Criminal Convictions: Prospective volunteers with prior felony or misdemeanor convictions who meet the above listed criteria may be approved when the following additional criteria have been met:

(A) May be under supervision, but must have no parole or probation violations in the past two years, or one year for certain volunteer programs, and approval of his/her parole officer.

(B) A prospective volunteer with a prior criminal conviction who performs services inside a correctional facility must have the approval of the facility functional unit manager at each facility where the service will be provided.

(d) Additional requirements may be established by department policy.

(3) Prospective volunteers must disclose on their volunteer application any connection to department inmates such as friends, neighbors, co-defendant, and relatives. If the prospective volunteer is a crime victim, he/she must disclose the name of the inmate or offender who committed the crime.

(4) A prospective volunteer must complete a volunteer/intern application. Failure to provide all requested information or sign all forms included in the application will result in volunteer status being denied.

(5) Employees, ex-employees not terminated for cause, retired employees, other agency staff, and contractors may serve as volunteers with the concurrence of the facility functional unit manager where the volunteer is to provide services. The employee's volunteer activities must be substantially different from the employee's job responsibilities. The differentiation must be noted in the position description.

(6) A prospective volunteer recommended to the department from an endorser will be interviewed by the department supervisor. A prospective volunteer who does not have an affiliation or endorser may be granted volunteer status with the approval of the program manager or designee.

(7) A student intern shall be recommended to the department by the appropriate official of the school, training program, mentorship, apprenticeship, college, or university where the intern is enrolled.

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

ADMINISTRATIVE RULES

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; Suspended by DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

291-015-0125

Training and Orientation

- (1) Approved volunteer training is required for all volunteers.
- (2) Functional unit orientation will be provided by the department supervisor or designee to whom the carded-volunteer has been assigned.
- (3) Facility orientation will be provided for those volunteering inside a correctional facility.
- (4) In-service training and other training may be offered periodically.
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

291-015-0130

General

(1) Carded-volunteers may be approved to access more than one facility. Access must be in compliance with the department's rule on Facility Access (OAR 291-016). If a volunteer is assigned to more than one facility, the volunteer must complete a facility orientation at each facility. The volunteer's facility supervisors will notify the superintendent or designee that the volunteer will be serving at that facility before the volunteer begins service. The superintendent has final authority over who may enter the facility.

(2) Volunteer ID Card:

(a) Within 60 calendar days of a volunteer being approved to continue volunteering past non-carded status, the volunteer's facility or functional unit supervisor will arrange with the facility volunteer coordinator for fingerprinting and facility orientation and will submit to the volunteer program manager or designee an ID card request form. The volunteer program manager or designee must approve exceptions.

(b) Carded-volunteers may enter authorized facilities only at their scheduled time and go unescorted from the place of check-in to the place where their program is held within the facility unless the superintendent requires that some or all volunteers be escorted and in that case, the facility will provide staff to escort the volunteers.

(c) When a volunteer's services are ended, the ID card must be returned to the department.

(d) If a volunteer does not enter a department facility to do volunteer work at least three times in a calendar year, a review must be conducted by the volunteer program to determine if the volunteer should be returned to non-carded status.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; Suspended by DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

291-015-0135

Utilization

(1) Volunteers shall not be placed in positions of authority over department employees or contractors.

(2) Volunteers shall not perform professional services requiring certification or licensing unless the volunteer program manager or designee verifies the validity of the license.

(3) Volunteers shall be treated with the same respect as staff and recognized as having unique roles that differ from, but are complimentary to staff roles.

(4) Volunteers shall follow department rules and policies.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

291-015-0140

Issuance and Use of Motor Vehicles

(1) A volunteer may use an official state vehicle while engaged in the performance of official state business on behalf of the department with written authorization by the functional unit manager.

(2) A volunteer shall comply with the provision of the department's policy on Vehicle Use and Reporting of Accidents.

(3) The functional unit manager may approve mileage reimbursement of a private vehicle where a special service is being performed. In these cases, the volunteer must provide the functional unit manager with proof of insurance coverage on his/her private vehicle.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

291-015-0145

Rule Violations and Unsafe Practices

(1) If a volunteer is arrested or convicted of a criminal offense (felony or misdemeanor) or if there is a recurrence of alcohol/drug abuse, the volunteer shall report this in a timely manner to their department supervisor and the volunteer program manager or designee. A review will be conducted to determine if the volunteer may continue to serve.

(2) When it is suspected that a volunteer may have violated a department rule, policy, procedure, or a state or federal law, or a volunteer has engaged in an act that endangers the safe and orderly operation of a facility or threatens the rehabilitative nature of the department's mission, the volunteer may be suspended pending a review by the volunteer program manager or designee in consultation with the functional unit manager or designee.

(a) After reviewing the facts of the situation, the volunteer program manager or designee will present the findings and make a recommendation to the volunteer's department supervisor and the functional unit manager.

(b) The functional unit manager will, in consultation with the volunteer program manager or designee and the volunteer's department supervisor, decide the appropriate course of action. When appropriate, preference will be given to additional training and supervision over termination of a volunteer's service.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; Suspended by DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

291-015-0150

Ending of Volunteer Service and Reinstatement

(1) A volunteer's service may be ended:

- (a) For violation of department rules or policies;
- (b) When there is no longer a need for the volunteer's services;
- (c) When the volunteer has not provided services to the department in a year;

- (d) When the volunteer requests it;
- (e) When the volunteer fails to respond to a department inquiry;
- (f) When the volunteer's supervisor, the volunteer program manager, and the functional unit manager or their designees deem it in the best interest of the department and/or the volunteer.

(2) Termination for cause:

(a) The volunteer program manager will confirm the termination in a letter to the volunteer;

(b) Appropriate documentation will be maintained by the volunteer program manager in accordance with departmental standard for archiving records;

(c) The volunteer program manager will send a memo to the superintendents, department ID card coordinator, and other interested parties giving notice of the action taken;

(d) The volunteer's endorser and affiliation will be notified when applicable;

(e) If termination is based on an inappropriate relationship with an inmate(s), the volunteer will be denied access to that inmate(s) including as an inmate visitor;

(f) If a student intern's service is terminated for cause, the college or university will be notified.

(3) Reinstatement after termination for cause:

(a) A volunteer who was terminated for cause may apply for reinstatement after a waiting period of not less than a year. The request for reinstatement shall be reviewed by the volunteer program manager, superintendent or designee or functional unit manager or designee, and the volunteer's previous supervisor. After the review is completed, the superintendent and/or functional unit manager shall make the final decision. If reinstatement is denied, the volunteer must wait at least another year before seeking reinstatement;

(b) If reinstatement is granted, the individual making the request shall fill out a new volunteer application and attend the training required of a new volunteer. The volunteer's affiliation will be verified. If the volunteer is endorsed, the endorser must be contacted and consent to the reinstatement;

(c) The reinstated volunteer will serve a one-year probationary period during which his/her supervisor will monitor the volunteer's activities regularly;

(d) The reinstatement may be made conditional on other remedial activities as well.

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

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Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 7-2004, f. & cert. ef. 8-9-04; Suspended by DOC 8-2010(Temp), f. & cert. ef. 7-14-10 thru 1-10-11

Rule Caption: Amends administrative rules for earned time credits for inmates in light of 2009 and 2010 legislative enactments.

Adm. Order No.: DOC 9-2010

Filed with Sec. of State: 7-14-2010

Certified to be Effective: 7-14-10

Notice Publication Date: 5-1-2010

Rules Amended: 291-097-0005, 291-097-0010, 291-097-0015, 291-097-0020, 291-097-0023, 291-097-0025, 291-097-0030, 291-097-0040

Rules Repealed: 291-097-0005(T), 291-097-0010(T), 291-097-0015(T), 291-097-0020(T), 291-097-0023(T), 291-097-0025(T), 291-097-0030(T), 291-097-0040(T)

Subject: These rule amendments are needed to implement House Bill 2623 (2009), Senate Bill 1007 (2010), and other housekeeping issues.

HB 2623 (2009) authorizes inmates to be eligible for earned time credits, not to exceed 60 days, for obtaining a high school diploma, General Educational Development (GED) certificate, or a certificate or degree from a post-secondary education institution as defined in ORS 337.511 or a journey level certification from a registered apprenticeship program as defined in ORS 660.010. HB 2623 applies to inmates who obtain a diploma, certificate or degree on or after January 1, 2010.

SB 1007 (2010) amended Oregon Laws 2009, chapter 660 (HB 3508) by restricting the number of inmates who were eligible for an increase in earned time credits under HB 3508. Specifically, SB 1007 limited the increase in earned time to 30 percent to only those inmates who are sentenced for otherwise eligible crimes on or after July 1, 2009 for crimes committed before February 17, 2010. Second, SB 1007 further amended HB 3508 by removing the possibility of an increase in earned time to 30 percent if a sentencing court had not entered a supplemental judgment authorizing an increase in earned time to 30 percent before February 17, 2010.

Additionally, the Department's current administrative rules do not adequately address how earned time credits will be applied toward inmates' sentences following violations of the conditions of transitional leave, second look conditional release, and escape situations. The Department needs to amend its administrative rules in order to address these potential "gaps" in its administrative rules.

Rules Coordinator: Janet R. Worley — (503) 945-0933

291-097-0005

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 137.635, 144.108, 144.110, 161.610, 179.040, 421.120, 421.121, 421.122, 423.020, 423.030 and 423.075.

(2) The purpose of this rule is to establish procedures for calculating, applying, retracting, and restoring earned time, statutory good time and extra good time credits, and for recommending modifications of parole release dates to the Board of Parole and Post-Prison Supervision, for inmates sentenced for crimes committed on or after November 1, 1989 (sentencing guidelines), and for inmates sentenced for crimes committed prior to November 1, 1989 (matrix sentences).

(3) Policy:

(a) It is the policy of the Department of Corrections that inmates serving sentences for crimes committed on or after November 1, 1989 (sentencing guidelines), may be considered for a reduction in their term of incarceration pursuant to ORS 421.121, as set forth in these rules.

(A) Inmates sentenced under sentencing guidelines may be eligible to earn sentence reduction credits (earned time credits) up to a maximum of 20 percent of each sentencing guidelines sentence. Inmates sentenced under sentencing guidelines on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced under the sentencing guidelines prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, may be eligible to

earn sentence reduction credits (earned time credits) up to a maximum of 30 percent of each sentencing guidelines sentence.

(i) For inmates sentenced on or after November 1, 1989 and who obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 prior to January 1, 2010, the earned time credits received by the inmate are dependent on institution conduct and compliance with his/her Oregon Corrections Plan.

(ii) For inmates sentenced on or after November 1, 1989 and who obtain a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010, the earned time credits received by the inmate are dependent on institution conduct, compliance with his/her Oregon Corrections Plan, and the inmate having obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010.

(B) Earned time credits are designed to provide a minimum amount of time credits necessary to serve as adequate incentive for appropriate institutional behavior, program participation, and for certain inmates, obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010.

(b) It is the policy of the Department of Corrections that inmates serving sentences for crimes committed prior to November 1, 1989 (pre-sentencing guidelines sentences), may be eligible for prison term reduction credits (statutory good time and extra good time credits) pursuant to ORS 421.120, as set forth in these rules.

(c) It is the policy of the Department of Corrections that inmates sentenced for crimes committed prior to November 1, 1989 (pre-sentencing guidelines sentences), may be eligible to receive a recommendation from the Department to the Board of Parole and Post-Prison Supervision that the inmate receive prison term reduction credits for an earlier date, as set forth in these rules.

(d) It is the policy of the Department of Corrections to develop Oregon Corrections plans on all inmates assigned to a Department of Corrections facility.

(e) It is the policy of the Department of Corrections to not calculate earned time for boarders from another state or those inmates serving only pre-sentencing guidelines sentences or sentences of death, life without the possibility of parole or life with the possibility of parole.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2009 Ch 623 (HB2623), Or Laws 2010 Ch 2 (SB1007)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2009 Ch 623 (HB2623), Or Laws 2010 Ch 2 (SB1007)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10

291-097-0010

Definitions

(1) Certificate or Degree from a Post-Secondary Education Institution: A certificate or degree awarded by a post-secondary education institution as defined in ORS 337.511 for satisfactory completion of a course of study, which has been approved by the State Board of Education.

(2) Earned Time Credits: Sentence reduction credits (days), up to 30 percent of the sentence imposed, that can be earned by an inmate sentenced under sentencing guidelines, pursuant to ORS 421.121, and these rules. The inmate earns the reductions by compliance with his/her Oregon Corrections Plan and institution conduct.

(a) An inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 prior to January 1, 2010, earns the reductions by compliance with his/her Oregon Corrections Plan and institution conduct.

(b) An inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a jour-

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ney level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010, earns the reductions by institutional conduct, compliance with his/her Oregon Corrections Plan, and obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010.

(3) **Earned Time Release Date:** The release date that has been achieved by an inmate, calculated by subtracting the earned time credits accrued from the maximum date.

(4) **Extra Good Time Credits:** Sentence reduction credits (days) that can be earned by an inmate sentenced for crimes committed prior to November 1, 1989 (pre-sentencing guidelines), for satisfactory work assignment or participation in an educational program, pursuant to ORS 421.120(1)(c), (d) and (e) and 421.122, and these rules. Days earned reduce the statutory good time date. Methods of computation are delineated in OAR 291-097-0070.

(5) **Final Review Period:** An increment of at least four months prior to an inmate's projected release date.

(6) **Functional Unit:** Any organizational component within the Department of Corrections responsible for the delivery of services or coordination of programs.

(7) **Functional Unit Manager:** Any person within the Department of Corrections who reports to either the Director, Deputy Director, or an Assistant Director and has responsibility for the delivery of program services or coordination of program operations.

(8) **Judgment:** Document issued by the court that commits an inmate to the legal and physical custody of the Department of Corrections, and reflects the inmate's term of incarceration, term of post-prison supervision, and court-ordered supervision conditions, if any.

(9) **Inmate:** Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.

(10) **Offender:** Any person under the supervision of the Department of Corrections, local supervisory authority or community corrections who is on probation, parole or post-prison supervision status.

(11) **Offender Information & Sentence Computation Unit (OISC):** The functional unit charged to administrate applicable statutes pertaining to sentencing; develop, implement and revise applicable processes for inmate and offender sentence computation; respond to public information requests with regard to inmates and offenders; certify an inmate's release date; and provide supportive services to Department facilities with regard to inmate sentencing.

(12) **Oregon Corrections Plan (OCP):** An automated case management tool incorporated into the Corrections Information System that serves as the primary tool for tracking an inmate's progress in working to mitigate the identified risk factors.

(13) **Parole Release Date:** The date on which an inmate is ordered to be released from an indeterminate prison sentence(s) to parole by the Board of Parole and Post-Prison Supervision. Parole release may be to the community, detainer or to another Department of Corrections sentence.

(14) **Post-Secondary Education Institution:** An education institution as defined in ORS 337.511.

(15) **Pre-Sentence:** That period of time a defendant spends in physical custody or incarceration from the point of arrest to the date of delivery to the Department to serve that sentence.

(16) **Prison Term:**

(a) **Sentencing Guidelines Sentences:** The length of incarceration time within a Department of Corrections facility as established by the court in the judgment for each crime of conviction.

(b) **Pre-Sentencing Guidelines Sentences:** The length of required incarceration time within a Department of Corrections facility as established by the order of the Board of Parole and Post-Prison Supervision setting of a parole release date.

(17) **Prison Term Analyst:** The staff person from OISC responsible for calculating inmates' sentences, applying sentence reduction credits and establishing release dates pursuant to applicable rules and statutes.

(18) **Projected Release Date:** The date upon which an inmate is anticipated to complete service of the prison term.

(19) **Restoration of Earned Time, Statutory Good Time, Extra Good Time Credits:** Where previously retracted earned time, statutory good time, extra good time and previously forfeited statutory good time and extra good time for parole violators are granted and applied back to the inmate's sentence.

(20) **Retraction:** Where previously granted earned time, statutory good time or extra good time credits are forfeited by an inmate as a result of a significant negative action on the part of the inmate, in accordance with the rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105), or forfeiture of program earned time credits granted following the effective date of this rule for inmates identified for residential alcohol and drug treatment (SCF 25) who fail to satisfactorily complete the prescribed program during their term of incarceration.

(21) **Review Period:** A six-month increment, beginning with an inmate's admission date, used to determine an inmate's compliance with institution behavior and his/her OCP.

(22) **Short-Term Transitional/Non-Prison Leave:** A leave for a period not to exceed 90 days preceding an established release date that allows an inmate opportunity to secure appropriate transitional support when necessary for successful reintegration into the community. Short-term transitional leave/non-prison leave is granted in accordance with ORS 421.510 and the Department's rule on Short-Term Transitional Leave, Emergency Leaves, and Supervised Trips (OAR 291-063).

(23) **Special Case Factor 25:** An inmate identified as both highly criminal and highly involved with drugs or alcohol through intake screening or subsequent assessment who is required to participate and complete a residential alcohol and drug program if available prior to the inmate's release.

(24) **Statutory Good Time Credits:** Prison term reduction credits (days) applicable to sentences for crimes committed prior to November 1, 1989 (matrix sentences) consisting of a reduction of one day for every two days served, pursuant to ORS 421.120(1)(a) and (b), and these rules. The application of statutory good time days establishes the initial statutory good time date and is re-calculated upon parole revocation based on the length of the remaining sentence.

(25) **Supplemental Judgment:** The form of judgment prepared by and transmitted to a sentencing court pursuant to Oregon Laws 2009, Chapter 660, §18 (House Bill 3508) which authorizes the Department to consider the inmate for a reduction in the term of incarceration under ORS 421.121 that may not exceed 30 percent of the total term of incarceration in a DOC facility.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2009 Ch 623 (HB2623)
Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2009 Ch 623 (HB2623)
Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2000, f. & cert. ef. 6-26-00; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10

291-097-0015

Earned Time Credits

(1) Pursuant to ORS 421.121, inmates sentenced under sentencing guidelines may earn sentence reduction credits up to 20 percent of the total sentencing guidelines prison term imposed for acceptable participation in OCP requirements and for maintaining appropriate institution conduct, except inmates:

- Serving a sentence subject to ORS 137.635;
- Serving presumptive sentences or required incarceration terms under ORS 161.737;
- Serving statutory minimum sentences under ORS 137.700 or 137.707;
- Serving a presumptive sentence under ORS 137.719;
- Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;
- Serving time as a sanction for violation of conditions of post prison supervision; or
- Subject to any other Oregon statutes restricting earned time credits.

(2) Pursuant to ORS 421.121, inmates sentenced under sentencing guidelines on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced under the sentencing guidelines prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, may earn sentence reduction credits up to 30 percent of the total sentencing guidelines prison term imposed for acceptable participation in OCP requirements and for maintaining appropriate institution conduct, except inmates:

- Serving a sentence subject to ORS 137.635;
- Serving presumptive sentences or required incarceration terms under ORS 161.737;

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(c) Serving statutory minimum sentences under ORS 137.700 or 137.707;

(d) Serving a presumptive sentence under ORS 137.719;

(e) Subject to ORS 137.750 and whose judgment does not state that the inmate may be considered for sentence reductions;

(f) Serving time as a sanction for violation of conditions of post prison supervision;

(g) Subject to any other Oregon statutes restricting earned time credits;

(h) Released onto short-term transitional leave on or prior to August 30, 2009, the operative date of Oregon Laws 2009, Chapter 660, § 18 (House Bill 3508);

(i) Released onto conditional release (Second Look) on or prior to August 30, 2009, the operative date of Oregon Laws 2009, Chapter 660, § 18 (House Bill 3508);

(j) Released onto short-term transitional leave/non-prison leave on or prior to August 30, 2009, the operative date of Oregon Laws 2009, Chapter 660, § 18 (House Bill 3508) as part of an Alternative Incarceration Program as provided by the Department's rule on Alternative Incarceration Programs (OAR 291-062);

(k) Whose prison term reached its earned time release date prior to or on August 31, 2009;

(l) Whose prison term reached its earned time release date prior to the date the sentencing court enters a supplemental judgment; or

(m) Whose supplemental judgment approving a reduction in the term of incarceration under ORS 421.121 that may not exceed 30 percent is:

(A) Dated after February 17, 2010 at 10 a.m.; or

(B) Dated on or after February 17, 2010, and the court made the order on the record in open court after February 17, 2010, at 10 a.m.; or

(n) Serving a sentence for the following crimes:

(A) Rape in the Third Degree under ORS 163.355;

(B) Sodomy in the Third Degree under ORS 163.385;

(C) Sexual Abuse in the Second Degree under ORS 163.425;

(D) Criminally Negligent Homicide under ORS 163.145;

(E) Assault in the Third Degree under ORS 163.165;

(F) Assault in the Fourth Degree under ORS 163.160(3);

(G) A crime listed in ORS 137.700; or

(H) An attempt to commit a crime described in this subsection.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2010 Ch 2 (SB1007)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2010 Ch 2 (SB1007)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 3-1998(Temp), f. & cert. ef. 2-20-98 thru 8-17-98; DOC 19-1998, f. & cert. ef. 8-14-98; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10

291-097-0020

Calculation and Application of Earned Time Credits

(1) For inmates sentenced on or after November 1, 1989, the maximum amount of earned time credits is 20 percent of the total sentencing guidelines sentence.

(a) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: 10 percent for compliance with the Oregon Corrections Plan and 10 percent for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

(b) Pursuant to Oregon Laws 2009, chapter 623 and section (4) of this rule, consideration for earned time credit may also be given for an inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010.

(2) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, the maximum amount of earned time credits is 30 percent of the total sentencing guidelines sentence.

(a) In determining whether an inmate will receive earned time credits for the review period under consideration, inmate performance will be evaluated in two areas: 15 percent for compliance with the Oregon Corrections Plan and 15 percent for maintaining appropriate institution conduct. The only possible determination for each area is noncompliance or compliance.

(b) Pursuant to Oregon Laws 2009, chapter 623 and section (4) of this rule, consideration for earned time credit may also be given for an inmate who obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010.

(3) Earned Time Review Periods:

(a) Oregon Corrections Plan compliance is defined as acceptable participation in work and self-improvement programs required within the OCP. The required activities within the OCP are determined by ongoing assessment and evaluation, which begins at the inception of the inmate prison term.

(A) An inmate will be considered to be compliant if he/she was not failed from the required program activity(ies) during the review period under consideration, nor did the inmate refuse to participate in required programming during the review period under consideration.

(i) As needed, the counselor will communicate with the treatment or program providers as well as work crew supervisors to evaluate an inmate's compliance with the required program activity(ies).

(ii) If the inmate's counselor determines the inmate is non-compliant with the OCP, he/she will approve a program failure for documentation in the inmate's computer record.

(B) Inmates Needing Residential Alcohol and Drug Treatment:

(i) Inmates identified as needing Residential Alcohol and Drug treatment (SCF 25), and who are not within the timeframes for the program will not be responsible for entering or completing that specific program activity, but will be held responsible for completing all other available required activities identified within the OCP.

(ii) However, any program earned time previously applied, and any earned time credits as a result of the inmate obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010, will be retracted during the final review period if it is determined the inmate has refused to enter, or failed to complete a residential alcohol and drug program prior to release.

(b) Institution conduct compliance is defined as maintaining Level I or Level II major misconduct-free behavior during the review period. Major misconduct is documented in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). Any finding of a Level I or Level II major misconduct violation during the review period will be considered as noncompliance. The date of the adjudication, not of the incident, will be used for the date of the violation.

(c) At the end of each review period, the prison term analyst will review the inmate's computer records for information reflecting the inmate's compliance with the current Oregon Corrections Plan and institution conduct. Based on the information contained in the inmate's computer records, the prison term analyst will apply either:

(A) An effective 0, 10, or 20 percent reduction to the sentencing guidelines sentence proportional for the review period under consideration for inmates sentenced on or after November 1, 1989, or

(B) An effective 0, 15, or 30 percent reduction to the sentencing guidelines sentence proportional for the review period under consideration for inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010 or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits.

(d) For inmates housed in non-Oregon Department of Corrections facilities, the designated counselor will review the inmate's institution file including any reports received from the housing facility to determine compliance with the current OCP and institution conduct.

(A) OCP compliance will be determined by the inmate's reported compliance with requirements as determined by Department staff or the housing facility staff.

(B) Due process comparable to the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) shall be applied. Institution conduct non-compliance will be determined by substituting the rule(s) of prohibited conduct, for the rule(s) violated at the housing facility, with the most equivalent charges as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). The functional unit manager or

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designee may impose sanctions, in addition to that imposed by the housing facility, related to sentence reductions.

(e) For each review period under consideration for inmates housed in Oregon Department of Corrections facilities, the prison term analyst will list the reasons for applying or not applying earned time credits and record the corresponding percentage of earned time applied to the inmate's sentence on the Earned Time Computation Form (CD 1154D).

(f) For inmates housed in non-Oregon Department of Corrections facilities, the designated counselor will list the reasons for applying or not applying earned time credits and record the corresponding percentage of earned time applied on the Earned Time Computation Form (CD 1154D).

(g) Upon the prison term analyst's or counselor's application of earned time credits toward an inmate's sentence for the review period under consideration, the OISC Unit will recompute the inmate's new earned time release date, file the Earned Time Computation Form (CD 1154D) in the institution file, and provide a copy of the determination to the inmate.

(4) Determination of Earned Time Credits for Education or Apprenticeship Certifications:

(a) Inmates who obtain a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 prior to January 1, 2010 are not eligible to be considered for earned time credits for education or apprenticeship certifications.

(b) Subject to OAR 291-097-0025 (Retraction of Earned Time Credits), 291-097-0030 (Restoration of Earned Time Credits), and 291-097-0040 (Determination of Earned Time Credits During Final Review Period for Sentencing Guidelines Sentences), at the time an inmate obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010, the prison term analyst will apply the amount of earned time credits, not to exceed 60 days, to the amount of earned time credits actually received by the inmate for either maintaining appropriate institution conduct or compliance with his/her Oregon Corrections Plan, in order to bring the inmate's total earned time credits up to the amount of earned time credits the inmate would have received if the inmate maintained appropriate institution conduct and was in full compliance with his/her Oregon Corrections Plan as of the date the inmate obtained the education or apprenticeship certification.

(A) The Department may apply up to 60 days earned time credits for education or apprenticeship certifications toward prior earned time not credited to the sentence due to adjudicated misconduct during the presentence incarceration or while an inmate is incarcerated in an Oregon county jail prior to the inmate's return to a Department of Corrections facility following an escape, revocation of second look conditional release, or violation of non-AIP or AIP short-term transitional leave, or toward non-compliance with institutional conduct or the Oregon Corrections Plan, and toward earned time previously retracted during the service of the sentence.

(B) In no event will an inmate be credited with more earned time credits than the amount of earned time credits the inmate would have received toward the sentence if the inmate maintained appropriate institutional behavior and was in full compliance with his/her Oregon Corrections Plan as of the date the inmate obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

(C) The earned time credits for education or apprenticeship certifications may not be applied to a sentence whose prison term reached its earned time release date prior to the date the inmate obtained a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

(D) An inmate may be credited with multiple education or apprenticeship certifications as long as no individual sentence receives more than 60 days total earned time credit for obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010.

(5) Determination of Earned Time Credits During Presentence Incarceration: For crimes committed on or after November 1, 1989, earned

time credits will be computed for the period in which an inmate is in custody in a non-Department of Corrections facility prior to sentencing and admission to the Department of Corrections, based solely on the inmate's conduct in the facility.

(a) Conduct compliance will be assumed, unless the Department receives documentation of adjudicated misconduct from the facility.

(A) For inmates sentenced on or after November 1, 1989, the inmate will be granted an effective 0 or 20 percent reduction toward the sentencing guidelines sentence proportional for the length of presentence incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the inmate will be granted an effective 0 or 30 percent reduction toward the sentencing guidelines sentence proportional for the length of presentence incarceration.

(b) Any verified major misconduct equivalent to a Level 1 or Level 2 major misconduct violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during any of the presentence incarceration credits applied to the sentence will result in an effective 0 percent reduction toward the sentencing guidelines sentence proportional for the total length of presentence incarceration.

(A) For inmates sentenced on or after November 1, 1989, conduct compliance will result in an effective 20 percent reduction in the sentencing guidelines prison term proportional for the length of presentence incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, conduct compliance will result in an effective 30 percent reduction in the sentencing guidelines prison term proportional for the length of presentence incarceration.

(6) If the inmate escapes, the prison term analyst will close out the current earned time review period, changing the current review period to end the day after escape. An inmate that is returned from an escape to a Department of Corrections facility will have the starting date of the new earned time credit cycle begin with the date of return. The escape will constitute a program failure for the period up to the escape.

(7) Alternative Incarceration Program:

(a) If, during any review period, the inmate is assigned to an Alternative Incarceration Program and for sufficient justification as determined by the functional unit manager's committee to be unsuccessful, the inmate will be considered a program failure as provided by the Department's rule on Alternative Incarceration Programs (OAR 291-062).

(b) If the inmate fails to successfully complete the short-term transitional leave (non-prison leave) granted through the Alternative Incarceration Program, the inmate will be considered a program failure and non-compliant with institution conduct for the length of the inmate's short-term transitional leave. The failure to successfully complete the short-term transitional leave (non-prison leave) will not result in a retraction of the portion of earned time credits for program compliance advanced at the beginning of the final review period as outlined in OAR 291-097-0025(3).

(8) Determination of earned time credits for inmates on non-AIP transitional leave:

(a) Earned time credits will be computed for the period in which an inmate is serving the remainder of his/her sentencing guidelines term of incarceration on short-term transitional leave (OAR 291-063).

(A) Institution conduct and Oregon Corrections Plan compliance will be assumed while an inmate is released on short-term transitional leave.

(B) Earned time credits for the period on transitional leave will be applied at a rate of 20 percent or 30 percent, in accordance with the applicable rate for the sentence at the time of release onto short-term transitional leave.

(b) A revocation of an inmate's short-term transitional leave is deemed non-compliance with the inmate's Oregon Corrections Plan and non-compliance with institution conduct. Upon revocation of short-term transitional leave, an inmate will receive an effective 0 percent reduction for OCP compliance and 0 percent reduction toward the sentencing guidelines sentence for institutional conduct proportional for the length of the inmate's short-term transitional leave.

(c) The failure to successfully complete the short-term transitional leave will not result in a retraction of the portion of earned time credits for

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program compliance advanced at the beginning of the final review period as outlined in OAR 291-097-0025(3).

(9) If all of an inmate's sentence(s) is vacated, reversed and remanded for new trial, or conviction affirmed and remanded for resentencing, the prison term analyst will close out the current earned time review period to end the day after release to the sentencing court. An inmate that is returned on a resentencing will start a new review period, effective the date of return to a Department of Corrections facility. The new earned time credit cycle date will be reflected on the inmate's facesheet.

(10) Determination of earned time credits for inmates serving the remainder of a sentencing guidelines sentence on conditional release (Second Look):

(a) Earned time credits will be computed for the period in which an inmate is serving the remainder of his/her sentencing guidelines term of incarceration in the community on conditional release, based solely on the inmate's compliance with his/her conditional release plan.

(b) Earned time credits for the period on conditional release (Second Look) will be applied at a rate of 20 percent or 30 percent, in accordance with the applicable rate for the sentence at the time of release onto conditional release (Second Look).

(c) Conduct compliance will be assumed, unless the inmate's conditional release is revoked by the sentencing court.

(d) Any revocation of an inmate's conditional release prior to the inmate reaching his/her projected earned time date will result in an effective 0 percent reduction in the sentencing guidelines prison term for the length of the inmate's sentence being served in the community on conditional release.

(11) If an inmate is incarcerated in an Oregon county jail prior to the inmate's return to a Department of Corrections facility following an escape, revocation of second look conditional release, or violation of non-AIP or AIP short-term transitional leave, earned time credits will be computed for the period in which the inmate is in custody based solely on the inmate's conduct in the county jail.

(a) Conduct compliance will be assumed, unless the Department receives documentation of adjudicated misconduct from the facility.

(A) For inmates sentenced on or after November 1, 1989, the inmate will be granted an effective 0 or 20 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the inmate will be granted an effective 0 or 30 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration.

(b) Any verified major misconduct equivalent to a Level 1 or Level 2 major misconduct violation as defined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) during the incarceration will result in an effective 0 percent reduction toward the sentencing guidelines sentence proportional for the length of incarceration.

(A) For inmates sentenced on or after November 1, 1989, conduct compliance will result in an effective 20 percent reduction in the sentencing guidelines prison term proportional for the length of incarceration.

(B) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, conduct compliance will result in an effective 30 percent reduction in the sentencing guidelines prison term proportional for the length of incarceration.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2009 Ch 623 (HB2623), Or Laws 2010 Ch 2 (SB1007)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2009 Ch 623 (HB2623), Or Laws 2010 Ch 2 (SB1007)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2000, f. & cert. ef. 6-26-00; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10

291-097-0023

Court Notification of Inmate Eligibility for Increase in Earned Time Credits

Pursuant to Oregon Laws 2009, Chapter 660 § 18 (House Bill 3508), for inmates with sentencing guidelines sentences imposed prior to July 1, 2009 for crimes committed on or after November 1, 1989:

(1) Upon identifying an inmate who is eligible for earned time credits that exceed 20 percent, the Department will send written notification to the inmate, as well as the presiding judge, trial court administrator, and the district attorney of the county in which the inmate was sentenced, of the particular sentences for which the Department has determined that the inmate is eligible for an increase in earned time credits. The Department will also provide a supplemental judgment to the presiding judge and trial court administrator of the county in which the inmate was sentenced that lists the particular sentences for which the Department has determined that the inmate is eligible for an increase in earned time credits.

(2) The Department will not send a written notification or supplemental judgment for any sentence in which an inmate has completed his/her prison term prior to or on August 31, 2009.

(3) The Department will not send a written notification or supplemental judgment for any inmate on or after February 17, 2010.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2010 Ch 2 (SB1007)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2010 Ch 2 (SB1007)

Hist.: DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10

291-097-0025

Retraction of Earned Time Credits

Time credits previously earned or applied will be retracted as follows:

(1) The inmate is found guilty of a major rule violation after a formal disciplinary hearing or upon waiver of the inmate's right to a hearing, and the disciplinary order directs that earned time credits earned or applied be forfeited in accordance with the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291 105).

(a) A recommendation for retraction of earned time shall be within the range corresponding to the violation level as set forth in Table 1.

(b) A recommendation for retraction of earned time credits may not exceed the amount previously applied, including any amount credited to the inmate for obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010 on or after January 1, 2010.

(2) Inmates identified as needing residential alcohol and drug treatment (SCF 25) who have not completed the prescribed program by their final review period will have all previously applied earned time for program compliance, as well as any amount credited to the inmate for obtaining a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in 660.010 on or after January 1, 2010, retracted from the first full review period following September 1, 1996. Retraction of program earned time may not exceed the amount previously applied.

(a) If earned time is retracted during or after the final review period in which a final release date is calculated, the release date will be adjusted by the OISC Unit. After such a retraction, the new release date will remain as established by the OISC Unit and that inmate shall be ineligible for any future earned time credit.

(b) The prison term analyst will contact the counselor for confirmation of whether an SCF 25 inmate requires a retraction at the time of the final review. SCF 25 retractions will be documented in writing by the counselor.

(3) Failure to comply with the OCP during the final review period will result in a retraction of the portion of the earned time credits for program compliance advanced at the beginning of the final review period. The prison term analyst will document the retraction on the Earned Time Computation form (CD 1154D).

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2009 Ch 623 (HB2623)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2009 Ch 623 (HB2623)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10

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& cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10

291-097-0030

Restoration of Earned Time Credits

(1) Time credits that have been retracted may be restored upon recommendation of staff and approval of the functional unit manager or designee only for an inmate who has been involved in saving a life or through the Adjustments to final order process outlined in the Department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). Time credits restored may not exceed those previously retracted.

(2) Restoration of time credits must be approved in writing by the functional unit manager or designee.

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030 & 423.075

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10

291-097-0040

Determination of Earned Time Credits During Final Review Period for Sentencing Guideline Sentences

(1)(a) Four months prior to an inmate's projected release date, prison term analysts (or the designated counselor for inmates housed in non-Oregon Department of Corrections facilities) will conduct a final review of inmates' earned time compliance. Final reviews will be conducted only for inmates serving a sentencing guidelines sentence. Prison term analysts will advance and apply earned time credits for the final review period as follows:

(b) Advancement and application of earned time credits for the final review period:

(A) Except for residential alcohol and drug treatment (SCF 25) inmates, an inmate's full compliance with the OCP and institutional behavior will be assumed during the final review period.

(i) For inmates sentenced on or after November 1, 1989, the prison term analyst will apply an effective 20 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(ii) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, the prison term analyst will apply an effective 30 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(B) For residential alcohol and drug treatment (SCF 25) inmates, only institutional behavior compliance will be assumed during the final review period unless the inmate has successfully complied with his/her Oregon Corrections Plan at the time of the final review.

(i) For inmates sentenced on or after November 1, 1989, if the inmate has successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 20 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(ii) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department of Corrections to consider the inmate eligible for additional earned time credits, if the inmate has successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 30 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(iii) For inmates sentenced on or after November 1, 1989, if the inmate has not successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 10 percent reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(iv) For inmates with eligible crimes sentenced on or after July 1, 2009 for a crime committed prior to February 17, 2010, or inmates sentenced prior to July 1, 2009 and for whom the sentencing court has issued a supplemental judgment authorizing the Department to consider the inmate eligible for additional earned time credits, if the inmate has not successfully complied with his/her Oregon Corrections Plan at the time of the final review, the prison term analyst will apply an effective 15 percent

reduction in sentence for the final review period and the OISC Unit will recompute the inmate's new earned time release date.

(2) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate's prison term is extended as a result of a new sentence or an adjustment in presentence time, the prison term analyst will delete the final review and any earned time credits advanced for the final review period. The prison term analyst will complete a new Earned Time Computation form (CD 1154D) to assure that the extended prison term is reviewed in accordance with these rules.

(3) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate's prison term is reduced, the OISC Unit will adjust the final review period and any earned time credits advanced for the final review period provided the inmate was in full compliance with his/her Oregon Corrections Plan and institutional behavior at the time of the final review.

(a) If the inmate was in partial compliance with his/her Oregon Corrections Plan or institutional behavior at the time of the final review, the prison term analyst will delete the final review and any earned time credits advanced for the final review period.

(b) The prison term analyst will complete a new Earned Time Computation form (CD 1154D) to assure that the reduced prison term is reviewed in accordance with these rules.

(4) If, after the completion of a final review and advancement of earned time credits for the final review period, the inmate obtains a high school diploma, General Educational Development (GED) certificate, a certificate or degree from a post-secondary education institution as defined in ORS 337.511, or a journey level certification from a registered apprenticeship program as defined in ORS 660.010, the OISC Unit will adjust the final review period and any earned time credits advanced for the final review period in accordance with OAR 291-097-0020(4).

Stat. Auth.: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2009 Ch 623 (HB2623), Or Laws 2010 Ch 2 (SB1007)

Stats. Implemented: ORS 137.635, 144.108, 144.110, 161.610, 179.040, 421.120 - 421.122, 423.020, 423.030, 423.075, OL 2009 Ch 660 (HB 3508), Or Laws 2009 Ch 623 (HB2623), Or Laws 2010 Ch 2 (SB1007)

Hist.: CD 14-1990, f. & cert. ef. 7-2-90; CD 17-1993, f. 6-7-93, cert. ef. 6-9-93; CD 11-1996, f. 8-27-96, cert. ef. 9-1-96; DOC 18-2001, f. & cert. ef. 10-12-01; DOC 23-2008(Temp), f. & cert. ef. 9-12-08 thru 3-10-09; DOC 2-2009, f. & cert. ef. 3-10-09; DOC 15-2009(Temp), f. & cert. ef. 8-31-09 thru 2-23-10; DOC 23-2009, f. & cert. ef. 11-20-09; DOC 6-2010(Temp), f. & cert. ef. 4-14-10 thru 10-11-10; DOC 9-2010, f. & cert. ef. 7-14-10

Department of Energy Chapter 330

Rule Caption: Establishes procedural and other requirements including timeframes for assessing energy resource suppliers.

Adm. Order No.: DOE 5-2010

Filed with Sec. of State: 6-16-2010

Certified to be Effective: 6-16-10

Notice Publication Date: 4-1-2010

Rules Amended: 330-075-0005, 330-075-0015, 330-075-0025, 330-075-0035

Rules Repealed: 330-075-0010, 330-075-0005(T), 330-075-0015(T), 330-075-0025(T), 330-075-0035(T)

Subject: The 2009 legislature, HB 2626, changed the definition of Energy Suppliers. The change added generation, transmission and distribution to the definition of activities eligible for inclusion under the energy supplier assessment. To implement this change and remain consistent with statute the ESA rules require amendment.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-075-0005

Purpose

These rules specify the form and content of information regarding Oregon gross operating revenues and energy sales to be submitted to the Department of Energy by energy resource suppliers. Such submittals are pursuant to ORS 469.421 as amended by **Oregon Laws 2009, Chapter 753**. The information will be used to calculate annual assessments on energy resource suppliers.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10; DOE 5-2010, f. & cert. ef. 6-16-10

ADMINISTRATIVE RULES

330-075-0015

Definitions

For the purposes of OAR division 330, division 75, unless otherwise specified, the following definitions shall apply:

- (1) "Department" means the Oregon Department of Energy.
 - (2) "Director" means the Director of the Oregon Department of Energy.
 - (3) "Electric Utility" has the meaning given that term in ORS 469.300.
 - (4) "Energy Resource Supplier" has the meaning given that term in ORS 469.421.
 - (5) "Gross Operating Revenue" has the meaning given that term in ORS 469.421.
 - (6) "Imported" relates to natural gas and petroleum products and includes those products not produced or salvaged from the earth or waters of the State of Oregon.
 - (7) "Natural Gas Utility" means a person engaged in or authorized to engage in the business of supply, transmission or distribution of natural or synthetic gas.
 - (8) "Petroleum Products" means those petroleum products subject to assessments under Section 3(4) and Section 5(4) of Oregon Laws 1981, Chapter 792. These products include:
 - (a) Crude petroleum;
 - (b) Fuel oil (distillate and residual);
 - (c) Kerosene;
 - (d) Liquefied petroleum gases;
 - (e) Motor vehicle fuel (when used as fuel for agricultural purposes);and
 - (f) Petroleum coke (when used as fuel in metal processing)."Petroleum products" does not include fuels subject to the requirements of Section 3 of Article IX of the Oregon Constitution, ORS 319.020 relating to aircraft and motor vehicle fuel, and ORS 319.530.
 - (9) "Petroleum Supplier" has the meaning given that term in ORS 469.421.
 - (10) "Person" has the meaning given that term in ORS 469.300.
 - (11) "Proprietary Information" means information in which its owner has an important, established financial or competitive interest and value. Proprietary information shall be determined by these indicators:
 - (a) Whether the information is treated as confidential by its owner;
 - (b) Whether its owner has made the information available to others, and the reason for such disclosure;
 - (c) The potential for competitive advantage that the information provides;
 - (d) The cost of developing the information;
 - (e) The potential for financial or competitive loss to its owner if the information is disclosed;
 - (f) Whether the information legally is protected by patents or copyrights, etc.
 - (12) "Retail Sales" means sales to the ultimate consumer.
 - (13) "Synthetic Gas" means a gas or gas mixture that is produced or collected for use as fuel. Synthetic Gas includes landfill gas, digester gas, biogas and biomethane.
 - (14) "Ultimate Consumer" means a customer who purchases energy for his own use and not for resale.
 - (15) "Utility" has the meaning given that term in ORS 469.300.
 - (16) "Wholesale sales" means sales of electricity, natural gas or petroleum products for subsequent resale.
- Stat. Auth.: ORS 183 & 469
Stats. Implemented: ORS 469.421
Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10; DOE 5-2010, f. & cert. ef. 6-16-10

330-075-0025

Energy Resource Suppliers Gross Operating Revenue Reporting Requirements

- (1) Energy resource suppliers with one or more locations or service areas in Oregon shall complete and submit the appropriate Department-supplied form or forms based on the suppliers energy type. The information provided on the forms shall when appropriate:
 - (a) Contain information relating to total gross operating revenue derived from the energy resource supplier's operations within Oregon during the most recently completed calendar year. Energy resource suppliers whose energy generation, transmission or distribution activities within Oregon are undertaken to directly supply the suppliers operations at the same location and not for the primary purpose of distribution or sale, shall

report only gross operating revenue from supplying, transmitting or distributing energy to another person. Energy resource suppliers who receive revenue from multiple business activities shall report only the gross operating revenue from supplying, generating, transmitting or distributing energy; and

(b) Contain gross operating revenues relating to wholesale and retail sales by the petroleum supplier of distillate fuel oil within Oregon during the most recently completed calendar year.

(2) Except as provided in OAR 330-075-0035, every energy resource supplier with one or more locations in Oregon shall submit a completed Department-supplied form on or before May 1 of each year. Forms shall be considered submitted as of the post mark date or receipt at the Department, whichever is earlier.

[Forms: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 4-1981(Temp), f. & ef. 9-14-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10; DOE 5-2010, f. & cert. ef. 6-16-10

330-075-0035

Extension of Submission Deadline

(1) Any energy resource supplier which finds it cannot meet the deadline set forth in OAR 330-075-0025 may apply to the Director for an extension of time. The written application shall include the following:

- (a) The reasons why the deadline cannot be met;
- (b) The measures being taken to comply with the deadline; and
- (c) The date on which the energy resource supplier intends to submit the required form(s).

(2) A petition for extension of time must be submitted no later than 15 days before the deadline from which an extension is sought.

(3) The Director may grant an extension of not more than fifteen days if:

- (a) The energy supplier makes a showing of hardship caused by the deadline;
- (b) The energy supplier provides reasonable assurance that the energy supplier can comply with the revised deadline; and
- (c) The extension of time does not prevent the department from fulfilling its statutory responsibilities.

Stat. Auth.: ORS 183 & 469

Stats. Implemented: ORS 469.421

Hist.: DOE 3-1981(Temp), f. & ef. 8-26-81; DOE 5-1981(Temp), f. & ef. 11-2-81; DOE 7-1982, f. & ef. 5-3-82; DOE 6-1984, f. & ef. 5-10-84; DOE 3-2009(Temp), f. & cert. ef. 12-21-09 thru 6-17-10; DOE 5-2010, f. & cert. ef. 6-16-10

Rule Caption: Adopt rules establishing a voluntary building energy rating system.

Adm. Order No.: DOE 6-2010

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Adopted: 330-063-0000, 330-063-0010, 330-063-0020, 330-063-0030, 330-063-0040

Subject: Senate Bill 79 creates the Task Force on Energy Performance ("Task Force"). One of the Task Force's duties is to develop recommendations for a voluntary energy performance scoring system for use in new and existing commercial and residential buildings. Senate Bill 79 directs the Oregon Department of Energy ("Department") to provide staff support to the Task Force and to adopt the Task Force's recommendations for a voluntary energy performance scoring system by July 1, 2010. These rules reflect the Task Force's recommendations.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-063-0000

Purpose and Scope

- (1) These rules establish a voluntary building energy rating system.
- (2) The building energy rating system shall be available for voluntary evaluation of energy use in new and existing commercial and residential buildings in Oregon and shall follow the standards established in these rules.

Stat. Auth.: 2009 OL Ch. 750

Stats. Implemented: 2009 OL Ch. 750

Hist.: DOE 6-2010, f. & cert. ef. 7-1-10

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330-063-0010

Definitions

For the purposes of these rules, unless otherwise specified, the following definitions shall apply unless the context requires otherwise:

(1) "Asset rating" means the building energy use rating generated by modeling under standardized weather and occupancy conditions, adjusted to account for variances in energy consumption.

(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 envelope" is that element of a building which encloses conditioned spaces through which thermal energy may be transmitted to or from the exterior or to or from unconditioned spaces.

(4) "Commercial building" means a structure of which more than 50 percent of usable square footage is used or intended for use in connection with:

- (a) The exchange, sale, or storage of goods; or
- (b) The provision of services.
- (c) A residential building with more than five dwelling units is a commercial building for the purposes of these rules.

(5) "Energy audit" means an assessment of a building's energy use and efficiency in order to determine the building's energy performance.

(6) "Operational rating" means a building energy use rating generated by measuring actual energy consumption taking into consideration all physical systems and their operation.

(7) "Physical systems" means any energy consuming equipment integrated in the building design, function or operation.

(8) "Residential building" as defined in ORS 701.005.

Stat. Auth.: 2009 OL Ch. 750
Stats. Implemented: 2009 OL Ch. 750
Hist.: DOE 6-2010, f. & cert. ef. 7-1-10

330-063-0020

Evaluation of Energy Performance

(1) Persons producing energy performance scores shall have training in the software program used to produce the rating.

(2) Building energy ratings must meet the following requirements:

(a) Building energy audit software used to produce building energy ratings shall be approved by the U.S. Department of Energy.

(b) The rating for new buildings shall be an asset rating based upon the projected energy consumption of the building and may include a physical inspection of the building.

(c) Ratings shall be readily available and understandable to an actual or potential building purchaser, lessee, renter or other occupant and shall include an explanation of the rating, the assumptions, the baseline, the date of the rating, and the name of the rater or rating organization.

(3) Building energy rating systems shall include the following:

(a) The estimated total annual energy consumption by fuel type.

(b) Acceptable benchmarks include, but are not limited to:

(A) A similar building built to state building code standards

(B) Oregon or national averages

(C) A comparable-sized building in square footage

(4) Building ratings may include the estimated amount of carbon dioxide emissions per housing unit, as a calculation of the carbon intensity for each fuel source used in the unit. The score should be calculated by aggregating the following estimates:

(a) The number of lbs CO₂/kWh of electricity consumed annually should be based on the eGRID sub-region NWPP data and adjusted annually. This is currently 0.902 lbs CO₂/kWh.

(b) 11.64 lbs CO₂/therm of natural gas consumed annually.

(c) 22.29 lbs CO₂/gallon of fuel oil consumed annually.

(d) 12.76 lbs CO₂/gallon of propane consumed annually.

Stat. Auth.: 2009 OL Ch. 750
Stats. Implemented: 2009 OL Ch. 750
Hist.: DOE 6-2010, f. & cert. ef. 7-1-10

330-063-0030

Specific Energy Performance Scoring Standards for Residential Buildings

(1) Building energy ratings systems for residential buildings shall meet the following additional requirements:

(a) Include the estimated total annual energy cost.

(b) The rating for existing residential buildings shall be an asset rating based upon the projected energy performance of the building and may include a physical inspection of the building.

(2) Residential energy use shall be displayed in annual Mbtu as determined by approved energy modeling methods, using standard inputs to represent a typical household. The annual energy consumption of each fuel (electricity, natural gas, oil, propane, etc) shall be displayed in retail units (kWh, therms, gallons, etc) and estimated annual customer cost based on an Oregon average. Local labeling strategies are encouraged to add local pricing data.

Stat. Auth.: 2009 OL Ch. 750
Stats. Implemented: 2009 OL Ch. 750
Hist.: DOE 6-2010, f. & cert. ef. 7-1-10

330-063-0040

Specific Energy Performance Scoring Standards for Commercial Buildings

(1) Building energy ratings systems for existing commercial buildings shall be an operational rating based upon the actual energy usage of the building and shall utilize utility data.

(2) Commercial energy use shall be displayed in annual btu 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) shall be displayed in retail units.

Stat. Auth.: 2009 OL Ch. 750
Stats. Implemented: 2009 OL Ch. 750
Hist.: DOE 6-2010, f. & cert. ef. 7-1-10

Rule Caption: Modifies the eligibility criteria for residential alternative energy devices and the calculation of net costs.

Adm. Order No.: DOE 7-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Amended: 330-070-0010, 330-070-0013, 330-070-0022

Subject: The rule amendments clarify that eligible costs of alternative energy devices eligible for the residential energy tax credit will be determined net of any other incentives, including federal tax credits; change the definitions of eligible alternative fuel vehicles; and extend the period during which a residence that has received tax credits for certain alternative energy devices will be ineligible for additional credits.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-070-0010

Purpose

(1) ORS 469.160 through 469.180 offer tax credits for Alternate Energy Devices (AEDs).

(2) These rules are OAR 330-070-0010 through 330-070-0097. They govern the way tax credits for AEDs will be granted or denied. None of these rules replace any building code requirements.

(3) Effective Date: July 1, 2010. All decisions made by the Oregon Department of Energy (ODOE) regarding AED eligibility, issuance of tax-credit technician certification, complaints regarding performance of tax-credit certified technician, revocation of technician tax-credit certification and other matters relating to the administration of this program after the effective date of these rules will be made consistent with the criteria and standards contained in these rules.

(4) These rules apply to tax years beginning on or after January 1, 2008. For all prior tax years, the law and rules applicable to those years remain in full force.

(5) ODOE grants or denies AED tax credits. By granting a tax credit, neither ODOE nor the state implies that the AED will save more money than it will cost. Meeting standards in these rules does not assure that an AED is safe or reliable.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-1990; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-070-0013

Definitions

As used in OAR 330-070-0010 through 330-070-0097:

(1) "AED" – Alternative Energy Device.

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(2) "Active Solar Heating" – A solar system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun's energy to a dwelling or part of a dwelling.

(3) "AFUE" (Annual Fuel Utilization Efficiency) – The efficiency rating for furnaces and boilers expressed as the ratio of the energy output to the energy (fuel) input, including part load and cycling effects, but not including fan or pump electrical energy use.

(4) "Alternative Energy Device" ("AED") – A device or system that reduces the amount of conventional energy used by a dwelling. AEDs include, but are not limited to, systems that collect and use solar energy; ground source heat pump systems; energy efficient appliances, energy efficient heating, ventilating and air conditioning systems; premium efficiency biomass combustion devices, fuel cell systems; alternative fuel vehicles and related alternative fuel devices or wind devices that supply, offset or supplement electricity used for a dwelling or that supply electricity to a utility.

(5) "Alternative Fuel" – Electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director of ODOE.

(6) "Alternative Fuel Vehicle" – An alternative fuel vehicle, equipment necessary to convert a vehicle to use an alternative fuel, or a fueling system necessary to operate an alternative fuel vehicle.

(7) "Applicant" – A person who applies for a residential alternative energy device tax credit under this section.

(a) A person who files an Oregon tax return and applies for a residential alternative energy device tax credit under this section, or

(b) An Oregon Investor Owned Utility (IOU) as defined in ORS 757.005 or its subsidiaries and affiliated interests as defined in 757.015 that is designated by an applicant under OAR 330-070-0013(7)(a) to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant.

(c) Any other entity qualified to receive the residential tax credit certificate for a qualifying alternative fuel device on behalf of the designated applicant, as determined by ODOE.

(d) An individual or business that provides the tax credit pass-through amount to the eligible AED owner, and is assigned the tax credit by the AED owner.

(8) "ARI" – Air Conditioning and Refrigeration Institute.

(9) "ASHRAE" – American Society of Heating, Refrigerating and Air Conditioning Engineers.

(10) "AWEA" – American Wind Energy Association.

(11) "Btu" – British Thermal Unit.

(12) "CEF" – Energy Factor for Combined Systems. A non-dimensional descriptor of efficiency for combined space and water heating systems during operation in the water-heating mode only. This part of the three-part rating (space heating efficiency and combined efficiency being the other two) takes into account the standby losses from the storage tank, if any. A higher energy factor denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(13) "CAFUE" – Annual Fuel Utilization Efficiency for Combined Systems. A descriptor of efficiency for combined space and water heating systems during operation in the space heating mode only. This part of the three-part rating (water heating efficiency and combined efficiency being the other two) does not count any standby losses from the storage tank, if any. A higher AFUE denotes better efficiency. Testing is accomplished using the ANSI/ASHRAE 124 test method.

(14) "Consumer Disclosure" – A form approved and provided by ODOE describing some AEDs. The technician fills this form out and gives it to the buyer of an AED. It shows estimated energy savings of the AED, required conservation items, required maintenance, freeze protection information and other data required by ODOE. Exclusions: energy efficient appliances and alternative fuel devices.

(15) "COP" – Coefficient of Performance. The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(16) "Department", "Energy Office", or "Office" – The Oregon Department of Energy.

(17) "Director" – Director of ODOE or the Director's representative.

(18) "Domestic Water Heating" – The heating of water used in a dwelling for bathing, clothes washing, dishwashing and other related functions.

(19) "Ductless Mini-split Heat Pump" – means an air-source heat pump consisting of an outdoor unit connected directly to one or more indoor units where the refrigerant is condensed and conditioned air is delivered directly to the room or zone of a home rather than through a central air handler.

(20) "Dwelling" – means real or personal property inhabited as a principal or secondary residence and located within this state. "Dwelling" includes, but is not limited to, an individual unit within multiple unit residential housing.

(a) Principal residence – The dwelling owned by the applicant who on the date of the application has legal title to a dwelling, including the mortgagor under a duly recorded mortgage of real property, the trust or under a duly recorded deed of trust or a purchaser under a duly recorded contract for the purchase of real property, and who inhabits the dwelling for no fewer than 14 days in the calendar year for which the credit is claimed;

(b) Secondary residence – Vacation property owned by the applicant; and

(c) Not qualifying – Primary or secondary residences do not include motor homes or recreational vehicles as defined in ORS 446.003.

(21) "EER" (Energy Efficiency Ratio) – A measure of a cooling system's instantaneous efficiency (cooling capacity divided by the power consumption), at DOE "A" test conditions, expressed in Btu/hr per watt.

(22) "Electric Load" – Appliance and lighting exclusive of any water or space heating use.

(23) "Energy Efficient Appliance" – A clothes washer, clothes dryer, water heater, refrigerator, freezer, dishwasher, space conditioning system, solar electric alternating current (AC) module, or any other major household appliance that has been certified by ODOE to have premium energy efficiency characteristics. Lists of certified energy efficient appliances are available from ODOE.

(24) "Energy Factor"(EF) – The non-dimensional efficiency rating for water heaters. It can be loosely translated as a percentage (e.g. EF 0.93 = 93 percent). A higher energy factor denotes better efficiency.

(25) "Energy Yield Chart" – Chart developed by ODOE showing first year energy yield of an AED.

(26) "Energy Recovery Ventilator" (ERV) – A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream that is also capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating at the lowest fan speed.

(27) "EUI(FURNACE)" – The Energy Use Index for a furnace, used to determine its electric efficiency, and calculated by the following formula, with inputs derived from the appropriate values in the Gas Appliance Manufacturers Association (GAMA) Directory of Certified Efficiency Ratings for Heating and Water Heating Equipment: $3.412 \times \text{EAE} / (3.412 \times \text{EAE} + 1,000 \times \text{EF}) = 2.0$ percent.

(28) "EUI(HERV)" – The Energy Use Index for an HRV or ERV, used to determine its electric efficiency, and calculated by dividing a model's power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(29) "FERC" – Federal Energy Regulatory Commission.

(30) "First Year Energy Yield" – Usable energy produced under average conditions by an AED in one year. Expressed in kWh, usable energy is the gross energy contribution minus any parasitic energy used to operate the system.

(31) "Fuel Cell Stack" – The portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(32) "Fuel Cell System" – A system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy. Systems using reformed fossil fuels will also produce carbon dioxide.

(33) "Ground Source Heat Pump" – A heating, ventilating and air-conditioning system, also known as a ground water heat pump, earth-coupled heat pump, geothermal heat pump or ground loop AED, that utilizes a subsurface closed loop heat exchanger to extract or reject heat to the earth.

(34) "Heating Season" – September 1 through March 31.

(35) "Heat Recovery Ventilator" (HRV) – A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream.

(36) "HSPF" (Heating Season Performance Factor) – A measure of the heating efficiency of a heat pump system over the entire heating season (heating accomplished divided by power used), expressed as a ratio of Btu per watt-hour.

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- (37) "HUD" – U.S. Department of Housing and Urban Development.
- (38) "Hybrid Vehicle" – An alternative fuel vehicle which draws propulsion energy from on-board sources of stored energy which include both an internal combustion or heat engine and a rechargeable energy storage system.
- (39) "Hydronic Space Heating System" – A system that uses hot or warm water to deliver heat from a boiler or water heater to the living spaces in a home.
- (40) "IREC" – Interstate Renewable Energy Council.
- (41) "kWh" – kilowatt-hour; 1 kWh = 3413 BTUs for purposes of ODOE calculations.
- (42) "Latent Recovery Moisture Transfer" (LRMT) – In an HRV or ERV, moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is transferred.
- (43) "MCFC" – Molten carbonate fuel cell.
- (44) "Modified Energy Factor" (MEF) – The non-dimensional efficiency rating for clothes washers. This measure, unlike the EF, takes into account the moisture removed from the wash load in the spin cycle, thereby changing energy use in the drying cycle. A higher MEF denotes a more efficient clothes washer.
- (45) "MM" – Million.
- (46) "Net Cost" – What the applicant paid to design, acquire, build and install the AED. Net cost includes permit and inspection fees. Net cost must include the value of federal tax credits or utility incentives. Net cost does not include service contracts, rebates, discounts or refunds.
- (47) "Net Generation" – The gross kWh produced minus internal losses and parasitic loads. The net generation is the amount available to serve dwelling loads, to provide to the utility, or both.
- (48) "OG" – Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory. Operating guidelines shall be from the directory in effect at the date the rules are adopted.
- (49) "ODOE" – Oregon Department of Energy.
- (50) "Owner-Built" – An AED that is assembled and installed on an owner's personal property and with an owner's labor only.
- (51) "Parasitic Power" – The electrical energy the system uses to operate.
- (52) "Passive" – A solar AED that relies on heated liquid or air rising to collect, store and move heat without mechanical devices.
- (53) "Passive Solar Space Heating" – This refers to a system or building design that collects and stores solar energy received directly through south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun's energy using only convection, radiation and conduction of energy. See section 330-070-0062 for details.
- (54) "Pass-Through Amount" – The minimum amount required to be passed through to an eligible AED owner in exchange for the right to claim the tax credit. The pass-through amount shall be determined on an annual basis by the Director.
- (55) "Pass-Through Provider" – An individual or business that pays the pass-through amount to an eligible system owner and applies for the tax credit in place of the system owner.
- (56) "Pass-Through Verification" – Information collected by ODOE verifying that the approved pass-through amount has been provided, that the AED owner has relinquished his or her claim to a tax credit and has assigned the credit to the pass-through provider.
- (57) "Peak Power Ratio" – In the case of a hybrid vehicle, the maximum power available from the electric motor providing propulsion energy when powered by the rechargeable energy storage system, divided by the total of such maximum power and the SAE net power of the internal combustion or heat engine.
- (58) "Performance Checked Duct System" – A forced air duct system whose premium efficiency characteristics are that it has been tested for duct leakage by a tax credit certified technician using ODOE-approved testing procedures, and that it has been repaired or constructed using ODOE-approved materials to reduce duct air leakage. For purposes of the tax credit, performance checked ducts are considered energy efficient appliances.
- (59) "Performance Checked Heat Pumps and Air Conditioners" – A heat pump or air conditioner whose premium efficiency characteristics are that it has been tested using approved procedures and repaired or serviced as needed by a tax-credit certified technician to assure that refrigerant charge and system air flow are within ranges recommended by the equipment manufacturer. For purposes of the tax credit, performance tested heat pumps and air conditioners are considered energy efficient appliances.
- (60) "Placed in Service" – The date when an AED is ready and available to produce usable energy.
- (61) "Premium Efficiency Biomass Combustion Device" – is any device that burns wood, compressed wood or other non-gaseous or non-liquid solid fuels of 100 percent organic origin for aesthetic or space-heating purposes.
- (62) "PV System" – A complete solar electric power system capable of delivering power to either the main or sub-panel in a residence. Necessary components include: solar electric modules, inverter, mounting system, and disconnection equipment.
- (63) "SEER" (Seasonal Energy Efficiency Ratio) – a measure of the efficiency of a cooling system over the entire cooling season (cooling accomplished divided by power used), expressed in Btu/kWh.
- (64) "Solar Attic Fan" – A device that uses photovoltaics to power a fan that pulls hot air out of an attic or roof space. Such a device may either be a complete, all-in-one unit or be comprised of a small photovoltaic panel and a DC powered attic fan designed to be run by photovoltaic panel.
- (65) "Solar Domestic Water Heating System" – A configuration of solar collectors, pump, heat exchanger and storage tank designed to heat water. System types include forced circulation, integral collector storage, thermosyphon, and self-pumping. For the purpose of determining system yields, a configuration of components is considered a new system if changes occur in any of the following: type or size of collectors, heat exchanger type or effectiveness, size of storage tank, or system type.
- (66) "Solar Electric AC Module" – A solar photovoltaic module coupled with a utility interactive inverter. The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.
- (67) "SRCC" – Solar Rating and Certification Corporation.
- (68) "Sensible Recovery Efficiency" (SRE) – In an HRV or ERV, the sensible (measurable) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.
- (69) "STC" – Standard Test Conditions, which are 25 degrees Celsius cell temperature and 1000 watts per square meter.
- (70) "Sunchart" – A chart or form issued or approved by ODOE showing the plotted path of the sun and any objects which block the sun from the AED. This shall include plant life and structures. The viewpoint shall be from the center of the lower edge of the collector. It shall show whether the plant life is made up of evergreen or leafy trees. If there is no shading on the AED, technicians shall indicate this in writing on the chart and shall include their signature and the date of the analysis.
- (71) "System Certification" – Certification that an AED as described in the application meets criteria for the tax credit.
- (72) "System Owner" – A person who owns the AED.
- (73) "Tax-Credit Certified Technician" – A technician who has been approved by ODOE as sufficiently knowledgeable about the tax credit program. A tax-credit certified technician is responsible for assuring that the system installed is according to ODOE rules and verifying system installation quality and performance. A tax-credit certified technician must ensure that the applicant or system owner is knowledgeable about ODOE's AED rules.
- (74) "Tax-Credit Listed Company" – A company that employs at least one tax-credit certified technician.
- (75) "Total Solar Resource Fraction" – the fraction of usable solar energy that is received by the solar panel/collector throughout the year. This accounts for impacts due to external shading, collector tilt and collector orientation.
- (76) "Unheated Spaces" – Attics, garages, and any space with an average ambient temperature of 50 degrees Fahrenheit or below during the heating season.
- (77) "Used Equipment" – Any product or any piece of equipment not under current manufacturers' warranty or which has not had a previous owner or user.
- (78) "Wastewater Heat Recovery Device" – A device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling's hot water supply system.
- (79) "Water Factor" (WF) – The measure of water efficiency in clothes washers. Measured in gallons per cubic foot of tub capacity, per cycle (gal/ft³/cycle).

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(80) "Wind AED" – A wind alternative energy device. A qualifying wind energy conversion system that uses wind to produce mechanical or electrical power or energy. This includes turbines, towers and their associated components needed to form a complete system.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-070-0022

Amount of Credit

(1) The amount of the AED tax credit is based on the first-year energy yield of an eligible AED. The energy yield basis for a solar tax credit may be adjusted by ODOE to account for less than optimal solar access.

(2) The amount of the AED tax credit shall not exceed the lesser of:

(a) \$1,500 or the first-year energy yield of the AED in kWh multiplied by 60 cents for AEDs used for solar or geothermal space heating, cooling, electrical energy production or domestic water heating for tax years beginning on or after January 1, 1998. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation. Only one tax credit for ground source heat pump systems will be issued per year per residence.

(b) For an alternative energy device used for swimming pool, spa or hot tub heating, the credit allowed must be based upon 50 percent of the cost of the device or the first year's energy yield in kilowatt hours per year multiplied by 15 cents, whichever is lower, up to maximum credit amounts set in subsections (a) through (c) of this section.

(c)(A) For each alternative fuel device, the credit allowed is 25 percent of the eligible cost of the alternative fuel device, not to exceed \$750 for devices placed in service on or after January 1, 1998. Individual credit may be claimed for both an alternative fuel vehicle and an alternative fuel fueling system.

(B) Eligible cost is the difference in the cost between the conventional fueled vehicles of similar size with similar features and the cost of an alternative fuel vehicle and its charging or fueling systems.

(i) Conventional fuel vehicles manufactured by the same manufacturer with the same seating capacity and/or cab cubic volume or weight difference which are less than 20 percent, may be used to define eligible costs, provided that other features (upholstery, audio, suspension, body appointment) are similar.

(ii) Low-speed vehicles, as defined under 801.331 Oregon Vehicle Code (2009), and alternative fuel vehicles capable of using E-85 and gasoline (flex-fuel vehicles) are not eligible for a tax credit.

(d) For fuel cell systems placed in service on or after January 1, 2007, one tax credit can be issued per year per residence based on the first-year energy yield of the AED in kWh multiplied by 60 cents, not to exceed \$6,000 and not to exceed 50 percent of the cost of the system. The maximum credit claimed per year will not exceed \$1,500.

(e) For photovoltaic systems installed on or after November 4, 2005, one \$6,000 tax credit per year per residence for four years (\$1,500 per year) not to exceed 50 percent of the cost of the system.

(f) For wind AEDs installed on or after January 1, 2007, one tax credit can be issued per year per residence based on the first-year energy yield of the AED in kWh multiplied by \$2.00, not to exceed \$6,000 and not to exceed 50 percent of the cost of the system. The maximum credit claimed per year will not exceed \$1,500.

(3) For an energy efficient appliance, the credit allowed under this section shall equal:

(a) 40 cents per kilowatt hour saved, or the equivalent for other fuel saved. The total for each appliance is not to exceed 25 percent of the cost of the appliance.

(b) \$50 per 6,000 Btu/hr of rated capacity, up to \$400 or 25 percent of the cost, whichever is less, if the energy efficient appliance is a very high efficiency air source ductless heat pump.

(4) For photovoltaic systems installed on or after November 4, 2005, the credit allowed under this section shall equal: \$3 per watt of the installed capacity measure in watts of direct current at industry standard test conditions. A maximum of one credit valued at \$6,000 shall be issued per residence per year for the year in which it was installed in annual increments up to \$1,500 over a four-year period. The total credit shall not exceed 50 percent of the cost of the system. All photovoltaic systems installed at a residence within a 5 year period shall be considered a single device.

(5) For premium efficiency biomass combustion devices, the credit allowed under this section shall be up to \$300 or 25 percent of the cost of the device, whichever is less, based upon the efficiency and the first year energy yield of the AED in kilowatt hours multiplied by 40 cents as determined by Oregon Department of Energy.

(6) The amount of the tax credit must not exceed the net cost of the AED to the applicant.

(7) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0060 through 330-070-0097, as those rules apply;

(b) Be the net cost of acquiring the system.

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have net cost prorated. Net cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) ODOE may find an AED to be too large for a dwelling. In such case net cost must be prorated. Net cost must be based on the largest useful size of an AED for the dwelling. ODOE must determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and an addition may not exceed \$1,500 per year.

(8) For purposes of the tax credit, the net eligible cost of the AED is only those costs necessary for the system to yield energy savings and must not include:

(a) Unpaid labor including the applicant's labor;

(b) Operating and maintenance costs;

(c) Land costs;

(d) Legal and court costs;

(e) Patent search fees;

(f) Fees for use permits or variances;

(g) Loan interest;

(h) Amounts from vendors of an AED that reduce its cost. These include rebates, discounts and refunds;

(i) Service contracts;

(j) Cost of moving a used AED from one site to another;

(k) Cost of repair or resale of a system;

(l) Any part of the purchase price which is optional, such as an extended warranty; and

(m) Delivery fees.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

Rule Caption: Establishes procedures, criteria and fees for the implementation of the EEAST Loan Program pilots.

Adm. Order No.: DOE 8-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Adopted: 330-112-0000, 330-112-0010, 330-112-0020, 330-112-0030, 330-112-0040, 330-112-0050, 330-112-0060, 330-112-0070, 330-112-0080, 330-112-0090, 330-112-0100

Subject: The department is required to initiate pilot programs to implement the EEAST loan program. These rules enable the department to implement the pilot loan program by establishing procedures and criteria for, and fees to fund the administration of, the EEAST loan program. The required reporting submitted by participants in the pilots program will provide additional information for the permanent rulemaking process.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-112-0000

Purpose and Objectives

These rules carry out provisions of ORS Chapter 470 as they pertain to the administration by the Oregon Department of Energy of the Energy Efficiency and Sustainable Technology Act of 2009. Oregon Administrative Rule, Chapter 330, Division 112 sets out the rules governing the Department's energy efficiency and sustainable technology loan program. The purpose of the program is to provide financing for energy efficiency upgrades of residential and commercial buildings in the State of Oregon.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

ADMINISTRATIVE RULES

330-112-0010

Definitions

As used in ORS Chapter 470 and in Oregon Administrative Rule, chapter 330, division 112, the following terms have the definitions set forth below unless the context requires otherwise:

- (1) "Act" means ORS 470.500 through 470.715.
- (2) "Base efficiency package" has the meaning given that term in ORS 470.050(3).
- (3) "Department" means the Oregon Department of Energy.
- (4) "Director" means the director of the Oregon Department of Energy.
- (5) "EEAST" means the energy efficiency and sustainable technology loan program.
- (6) "Eligible entities" means those parties that meet Department underwriting criteria to service SELP loans.
- (7) "Estimated economic benefit" means the amount by which the average estimated monthly energy savings of a project exceed the project repayment costs.
- (8) "Measure" means building shell and energy efficiency equipment improvements via materials and products that reduce energy use by an existing building.
- (9) "Nontraditional technology" means technology applicable to renewable energy sources (such as, biomass, geothermal, solar, wave, and wind), smart grid, and alternative fuels.
- (10) "Optional package" has the meaning given that term in ORS 470.050(21).
- (11) "PPFA" means Public Purpose Fund Administrator
- (12) "Program" or "EEAST program" means the energy efficiency and sustainable technology loan program.
- (13) "Project" means a small scale local energy project, as defined by ORS 470.050(27), being funded by the EEAST program.
- (14) "Project Manager" means a sustainable energy project manager.
- (15) "Property" means the property benefited by a project.
- (16) "Territory" or "sustainable energy territory" means the geographic service area that a sustainable energy project manager serves.
- (17) "Useful life" means the number of years that a project or project component can likely function without major repair or replacement.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-112-0020

Sustainable Energy Project Managers

- (1) The PPFA shall be the project manager for the investor-owned utility service territory, and shall be the acting project manager in any other territory that is not served by an existing project manager. The PPFA and consumer-owned utilities are not subject to the requirements of this section.
- (2) Qualifying entities may apply to be project manager for a territory: where the 5 year term of a project manager is within 1 year of expiry; or where the PPFA is acting project manager.
- (3) Each entity applying to be a sustainable energy project manager shall submit to the director the following:
 - (a) Completed application on a form approved by the director,
 - (b) Proof of its status as a city, county, metropolitan service district, local government, nonprofit, for-profit, tribal or state entity;
 - (c) A description of the sustainable energy territory of the proposed sustainable energy project manager;
 - (d) A proposed business plan that demonstrates how the entity will provide the following services for the program within the proposed sustainable energy territory:
 - (A) Promotion and outreach;
 - (B) Technical support;
 - (C) Financial support including loan applicant support
 - (D) Energy project verification;
 - (E) Monitoring of program effectiveness;
 - (F) Cooperation and coordination of outreach and promotional efforts with local utilities and other stakeholders;
 - (G) Use of customer contacts, resources and capacity of utilities to engage and inform utility customers about the program;
 - (H) Coordination with gas utilities regarding any changes to a gas pipeline or the installation of appliances used for space heating, water heating and compressed natural gas refueling;
 - (I) Coordination with electric utilities regarding electric charging or any changes to electrical connections that are external to a structure;
 - (J) Differentiation between certified contractors, who provide health insurance benefits, when providing information to program participants;

(K) Referral of applicants with household incomes that may qualify them for a weatherization program to the Housing and Community Services Department;

(L) Provision of the following information to the Department on a monthly basis:

- (i) The total amount of energy efficiency and sustainable technology loans issued;
 - (ii) The types of projects being funded by the loans;
 - (iii) The characteristics of the loan recipients; and
 - (iv) The number of applications denied, and the reasons for denial;
- (M) Maintenance of records that document the receipt and disbursement of funds provided through the program;
- (N) Maintenance of records that document both approved and denied applications for loans; and
- (O) The underwriting criteria used to determine loan eligibility
- (e) A detailed breakdown of the cost of implementation of its business plan, in particular the elements of its business plan listed in OAR 330-112-0020(3)(d)(A) through (D); and
- (f) Background information about the applicant including, but not limited to, the qualifications, relevant experience, financial status and staff of the applicant.

(4) The Department may request verification that a project manager continues to meet the required qualifications and provide the required services at any time.

(5) The director may terminate the certification of a project manager for:

- (a) Failure to adequately implement an applicable energy efficiency and sustainable technology loan program plan;
- (b) Noncompliance with the regulatory or statutory requirements of the energy efficiency and sustainable technology loan program;
- (c) Failure to meet any project manager criteria established by the director; or
- (d) Failure to perform other certification conditions.

If the director terminates the certification of a project manager, the PPFA shall become acting project manager.

(6) The Department shall monitor reports to determine compliance with program requirements, monitor fiscal patterns and chart program progresses. The Department may conduct a review of a project manager to include:

- (a) Financial records of the project manager;
 - (b) Loan files;
 - (c) Work completed by the program manager, including training and technical assistance provided; and
 - (d) Post-installation inspections conducted by the program manager.
- (7) When reviewing an applicant, the Department may consider:

(a) The organizational experience of the applicant and the capacity of the applicant to successfully implement the energy efficiency and sustainable technology loan program goals and requirements;

(b) The strength of the applicant's proposed plan for implementing the goals and requirements of the energy efficiency and sustainable technology loan program;

(c) The cost at which the applicant can conduct outreach, promotion, loan applicant support and project verification services necessary to implement the energy efficiency and sustainable technology loan program;

(d) Any fiduciary or other obligation of the program manager that creates an actual or apparent conflict of interest that may interfere with achieving the goals of the energy efficiency and sustainable technology loan program; and

(e) The approval of the utility or utilities within whose service territory the applicant is requesting certification.

(8) The director may negotiate any feature of the applicant's proposed plan, or place such conditions on the certification, as necessary to ensure that the applicant will meet the goals and requirements of the energy efficiency and sustainable technology loan program.

(9) Pilot program project managers in consumer-owned utility service areas shall provide information to the Department, in a form approved by the director, to meet the requirements of Oregon Laws 2009, Chapter 753, Section 44.

(10) A project manager that wishes to contract with a qualified third party to assist in providing services within its territory must provide a copy of the proposed contract to the Department and obtain the approval of the director prior to execution.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

ADMINISTRATIVE RULES

330-112-0030

Sustainable Energy Territories

Territory boundaries shall follow the following hierarchy:

(1) The sustainable energy territory served by the PPFA shall be the service territory of investor-owned electric utilities.

(2) The sustainable energy territory served by the PPFA shall also include the service territory of investor-owned gas utilities, unless those utilities choose to act as project manager. The sustainable energy territory of an investor-owned gas-utility shall be the service territory of that investor-owned gas utility, other than those areas assigned above.

(3) The sustainable energy territory of local electric utility shall be its service territory, subject to adjustment by the director pursuant to ORS 470.530(3).

(4) If a consumer-owned local electric utility elects not to be the project manager and the consumer-owned local gas utility elects to be the project manager and the service territories of both overlap, the sustainable energy territory shall be the service territory of the local gas utility, subject to adjustment by the director pursuant to ORS 470.530(3).

(5) Territory boundaries not delineated above may be set by the department as necessary to accomplish the goals of the program.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-112-0040

Form of Loan Assistance

The following apply to EEAST program:

(1) The Department may make loans to eligible entities under the terms of written commitments.

(2) Loans shall be made directly with proceeds from bonds issued pursuant to ORS 470.610 or other available funds obtained by the Department. The Department may establish such fees, charges, premiums, interest rates, and repayment terms, as the Department considers appropriate or necessary to provide sufficient funds to:

(a) Pay for the cost of borrowing through bond issuance; and

(b) Carry out the EEAST program;

(c) Further, the Department may include in the loan documentation such covenants, performance criteria and reporting requirements as the Department considers appropriate or necessary for the type, use and amount of loan provided, and such other provisions as the Department considers appropriate or necessary, to provide sufficient safeguards to protect the financial interest of the state. The Energy Loan Program Advisory Committee may assist the Department in the advising on such matters.

(3) The borrower shall comply with the provisions of the program rules and the Act. If the borrower does not comply, the Department may revoke its commitment or approval, demand repayment of all or a portion of the loan funds advanced, or exercise any remedy available to it at law or in equity.

(4) If the Department receives loan applications in an amount greater than the amount of funds available, the Department shall select those applications which, in the judgment of the Department, best achieve the purposes of the program rules and the Act. The Department may seek assistance from the Energy Loan Program Advisory Committee.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-112-0050

Loan evaluation, processing and collection

(1) Projects and EEAST loans may be delivered through a project manager. The PPFA and consumer-owned utilities that participate in the EEAST program will be the initial project managers within their territories.

(2) The Department will make loans to eligible entities that will use the funds to provide EEAST loans.

(3) To help the Department or a project manager evaluate the financial strength of an applicant, the applicant shall submit any documents, credit reports and financial statements requested by the Department or project manager as is consistent with the provisions of the Equal Credit Opportunity Act as it relates to the Department. The Department or the project manager may request an applicant's social security number in accordance with provisions of the Privacy Act of 1974.

(4) The Department or project manager will review all applications of eligible entities. An applicant may be required to submit further documentation to determine whether a loan should be approved. If the Department or project manager fails to receive any items requested within fourteen days after making its request to the applicant, the loan application may be denied. If a loan application is denied, the applicant must submit a new

application and again pay any fees and charges applicable to loan applications if such applicant chooses to reapply.

(5) The Director or project manager may deny a loan to any applicant that restricts membership, sales, or services on the basis of any of the protected classes listed in ORS 659A.003.

(6) The final maturity of a loan shall not exceed the lesser of (a) 20 years from the date of its making, and (b) the dollar-weighted average of the useful life of the project components.

(7) The Director may limit the term and amount of any loan. The Director may deny any loan request or set such terms and conditions as needed to assure a sound loan or to protect the program funds and the Department.

(8) All loans made by the Department shall meet the following criteria:

(a) Proposed loan amount and existing debt secured by liens on the property shall not exceed 90% of the value of the subject property after the project improvements are made.

(b) Applicants must be current on all debt secured by the property.

(c) Applicants must obtain written approval from holders of existing liens on the property for financing that exceeds 50% of the applicant's equity in the property.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-112-0060

Certification Standards for Contractors

These standards apply to contractors participating in the construction of projects financed through the program, but not including home energy auditors. Contractors must obtain certification under ORS 701.119 from the Construction Contractors Board to participate. To obtain certification the contractor must:

(1) Prove that the contractor has sufficient skill to ensure that the contractor can successfully install energy efficiency, renewable energy or weatherization projects with a high degree of quality and customer satisfaction, such skills to be demonstrated by one of the following:

(a) Oregon Home Performance with ENERGY STAR Building Performance Institute (BPI) certified

(b) Residential Energy Analyst Program (REAP) certified through the Oregon Energy Coordinators Association.

(c) Completion by employees of training based on curriculum developed by an accredited organization to meet the United States Department of Energy standards and any additional specifications and standards designated by the Department and PPFA.

(2) Not be a contractor listed by the Commissioner of the Bureau of Labor and Industries under ORS 279C.860 as ineligible to receive a contract or subcontract for public works.

(3) Be an equal opportunity employer or small business or be a minority or women business enterprise or disadvantaged business enterprise as those terms are defined in ORS 200.005.

(4) Demonstrate a history of compliance with the rules and other requirements of the Construction Contractors Board and of the Workers Compensation Division and the Occupational Safety and Health Division of the Department of Consumer and Business Services.

(5) Employ at least 80 percent of employees used for energy efficiency and sustainable technology loan program projects from the local work force, if a sufficient supply of skilled workers is available locally.

(6) Demonstrate a history of compliance with federal and state wage and hour laws.

(7) Pay wages to employees used for projects at a rate equal to at least 180 percent of the state minimum wage, unless federal prevailing wages for residential weatherization and energy efficiency retrofit work is higher, in which case the higher wage requirement will apply.

(8) Pay wages to employees used for commercial structures at the prevailing wage rate for each trade or occupation employed.

(9) Certified contractors that provide the department proof that they provide employees with health insurance benefits shall be identified as preferred service providers by the Department and project managers. This information must be provided annually on the anniversary of certification by the Construction Contractors Board.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)

Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)

Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

ADMINISTRATIVE RULES

330-112-0070

Standards for Contractors during Pilot Programs

Contractors without certification may work on projects under pilot programs if no certified contractor is available, and the PPFA or project manager has approved the contractor. The contractor must pay wages to employees used for pilot projects at a rate equal to at least 180 percent of the state minimum wage or, if the project is for a commercial structure or is subject to prevailing wage laws, the prevailing wage for each trade or occupation employed.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-112-0080

Energy Audits

(1) Proposed measures shall be ranked in order of energy cost savings per dollar of measure cost before incentives, with less effective measures including in their energy savings calculations any reductions in energy use available from more effective measures.

(2) The estimated costs and energy savings calculations for each measure in the energy audit shall clearly and separately note all eligible rebates, tax credits or other incentives for the measure.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-112-0090

Base Efficiency Package and Optional Packages Content

(1) The base efficiency package and any recommended optional packages for a property shall be compiled from the results of the energy audit. Any measure that is anticipated by the audit results to produce energy savings equal to or greater than the loan payment amount for that measure shall be included in the base efficiency package. Any other measures that the project manager believes to be feasible for the property shall be part of one or more optional packages. A measure that does not during its useful life produce anticipated energy savings of at least 25 percent of the cost of the measure is not eligible for a loan under this program; but this restriction does not apply to nontraditional technologies approved by the Department.

(2)(a) Notwithstanding (1), the base efficiency package for a residential dwelling served by a single meter shall include an insulation package in accordance with installation standards to at least the following, as applicable:

(b) Building Envelope.

(A) Attic/Ceiling: insulate to R-38;

(B) Floor: if currently R-11 or less, insulate to R-30 or full cavity thickness;

(C) Wall: if currently R-4 or less, insulate to R-11 or fill wall cavity; and

(D) Air Leakage: whole-house air sealing measures in accordance with installation standards.

(3) Any measure identified in an audit that produces energy savings equal to 95 percent or more of the loan payment amount for that measure may also be included in the base efficiency package if there are sufficient loan offset grant funds available to offset measure costs to the point where energy savings and loan costs for the base efficiency package are equal.

(4) All base efficiency package measures, if any, shall be included in the project before a project may include any optional packages.

(5) Optional package measures may be added to a project in order of energy savings per dollar of measure cost. More efficient measures must be included in a project before less efficient measures can be considered.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-112-0100

Fees

(1) Base Efficiency Package Fee: A base efficiency package which produces an estimated economic benefit shall not be eligible for loan offset grant funds and shall include a base efficiency package fee of 10 percent of the estimated economic benefit associated with the base efficiency package. Prepayment calculations for loans that include a base efficiency package fee shall include the amount of the base efficiency package fee for the term of the loan.

(2) Project Initiation Fee: The department hereby establishes the project initiation fee for all EEAST loans at three percent of the application loan amount.

Stat. Auth.: ORS 470.500 - 47.0715, 2009 OL Ch. 753 & HB 3675 (2010)
Stats. Implemented: ORS 470.500 - 470.715, 2009 OL Ch. 753 & HB 3675 (2010)
Hist.: DOE 8-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

Rule Caption: Establishes procedures, criteria and fees for the implementation of the biomass producer or collector credit.

Adm. Order No.: DOE 9-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Adopted: 330-170-0010, 330-170-0020, 330-170-0030, 330-170-0040, 330-170-0050, 330-170-0060, 330-170-0070

Subject: House Bill (HB) 2078 (2009), Section 49, amended Oregon Revised Statute (ORS) 315.141 to allow a tax credit for agricultural producers or collectors of biomass that is used in Oregon as biofuel or to produce biofuel. ORS 315.141 allows the tax credits in the year the producer or collector transfers the biomass to a biofuel producer. In addition, HB 2078 authorizes ODOE to establish by rule the criteria to determine additional characteristics of biomass and for determining the amount of the tax credit to be certified, and to charge and collect a fee from taxpayers for certification of those credits. Non-profit and government agencies are not eligible for the tax credits.

Rules Coordinator: Kathy Stuttaford—(503) 373-2127

330-170-0010

Purpose and Scope

(1) OAR chapter 330, division 170 establishes the procedure and criteria for certifying tax credits under ORS 315.141 and ORS 469.790.

(2) These rules apply to applications for certification received on or after July 1, 2010, for tax years beginning January 1, 2010.

Stat. Auth.: ORS 351.141 & 469.791
Stats. Implemented: ORS 351.141 & 469.791
Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-170-0020

Definitions

For the purposes of OAR chapter 330, division 170 the definitions in ORS 315.141 apply and in addition the following definitions shall apply:

(1) "Certificate" means a document issued by the department representing the right to claim a tax credit described in ORS 315.141 for the amount described on the certificate.

(2) "Department" means the Oregon Department of Energy.

(3) "Director" means the Director of the Oregon Department of Energy.

(4) "Engine-Generator Set Electrical Efficiency" means the value derived from the following calculation — Electrical energy generated (kWh)/Biogas consumed by engine (ft³ or Btu's)

(5) "Overall Thermal Conversion Efficiency" means the value derived from the following equation — output of electricity (MMBtu) + net usable heat (MMBtu)/Fuel Input (MMBtu)

(6) "Applicant" or "taxpayer" means an individual or a legal entity (including but not limited to any domestic or foreign corporation, trust, partnership, cooperative, or limited liability company), but does not include a nonprofit organization or a government entity.

Stat. Auth.: ORS 351.141 & 469.791
Stats. Implemented: ORS 351.141 & 469.791
Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-170-0030

Applicant Eligibility

To be eligible for certification, the applicant must:

(1) Be an Agricultural Producer or Biomass Collector, including a Biofuel Producer that is also an Agricultural Producer or Biomass Collector;

(2) Have title to the biomass at the time the biomass is delivered to the Biofuel Producer;

(3) Produce or collect, directly or indirectly, and including through agents or employees, the biomass in Oregon; and

(4) Deliver or facilitate the delivery of the biomass to be:

(a) Used as Biofuel in Oregon; or

(b) Used to produce Biofuel in Oregon.

Stat. Auth.: ORS 351.141 & 469.791
Stats. Implemented: ORS 351.141 & 469.791
Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-170-0040

Biomass Eligibility

(1) Biomass does not include:

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(a) Woody material used to produce split cord wood, firewood, or charcoal briquettes.

(b) Municipal solid waste.

(c) Sawdust or other residual wood waste from mill operations.

(d) Algae.

(2) The biomass must be converted into biofuel or used as biofuel in Oregon.

(3) The biomass must meet the definition in these rules and be listed in ORS 469.790.

(4) Biomass that is converted to biogas and utilized for energy production must be converted at a facility with a minimum engine-generator set electrical efficiency of 25%.

(5) Biomass that is converted to heat and/or electric energy through combustion must be converted at a facility with a minimum overall thermal conversion efficiency of 40%.

(6) Waste grease that is not dewatered prior to delivery to a biofuel producer will be assumed to have an eligible biomass content of 20% of the delivered weight of the oil and water mixture, unless the applicant can demonstrate additional measurement.

(7) Only one taxpayer may receive a certified credit for each unit of biomass.

Stat. Auth.: ORS 351.141 & 469.791

Stats. Implemented: ORS 351.141 & 469.791

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-170-0050

Application Process

(1) A complete application must be received by the department no later than 45 days following the end of the tax year for which the tax credit certification is being requested. Applicants may submit the application via e-mail or mail to the address listed on the department's website.

(a) The application must include:

(A) A complete application, on a form provided by the department;

(B) Proof that the Biomass Collector held title to the biomass at the time the biomass was delivered;

(C) Documentation indicating the physical address, township, range, section, and quarter/quarter section, or other specific geographic indicator of the origination of the biomass;

(D) A summary or settlement sheet indicating each shipment that was received by the Biofuel Producer. Each summary or settlement sheet must include the following:

(i) The date of delivery for each shipment of biomass;

(ii) The type of biomass included in each shipment and applicable tax credit rate for each shipment;

(iii) The amount of biomass delivered in each shipment;

(iv) The weight ticket number or a similar unique identifier;

(v) The name and address of the Biofuel Producer to which the biomass was delivered.

(E) Receipts or certification from the Biofuel Producer(s) indicating the amount of biomass delivered to it by the Agricultural Producer or Biomass Collector and a statement from the Biofuel Producer indicating the amount of biomass that was used or is to be used as Biofuel or to produce Biofuel in Oregon;

(F) Documentation, from the Biofuel Producer indicating adherence to any additional criteria provided in 330-170-0040 that apply to the biomass; and

(G) All calculations used to convert the measure of the biomass to another measure and source references for the calculations and all variables.

(H) An application fee equal to \$0.007 multiplied by the total amount of tax credits requested or \$50, whichever is greater.

(b) If it is not practicable to provide weight tickets or receipts from the Biofuel Producer for animal manure, Biomass Collectors that collect animal manure must include the following information with the application:

(A) Documentation demonstrating the following methodology to determine the amount of animal manure eligible for a tax credit:

(i) The log of animal numbers: [Average number of animals on the farm, by classification, (conduct a separate calculation for milkers, dry cows, heifers, calves)] multiplied by [the average lbs./1,000] = number of 1,000 pound animal units.

(ii) The amount of manure generated: [the number of 1,000 pound animal units] multiplied by [the average manure production value from the Natural Resources Conservation Service Agricultural Waste Management Field Handbook] multiplied by [the number of days in the period], divided by [2,000 pounds]; and

(B) Documentation indicating the manure was used or is to be used as Biofuel or to produce Biofuel in Oregon.

(c) If it is not practicable to provide weight tickets or receipts from the Biofuel Producer, Agricultural Producers that produce oil seed crops, grain crops, grass, wheat, straw or other vegetative biomass that is used to produce virgin oil or alcohol; and that complete the crushing or processing of the biomass into virgin oil, alcohol or other Biofuel, must include the following records with their application::

(A) Documentation demonstrating the quantity of biomass produced, which must include one or more of the following:

(i) Acreage report(s) or yield data submitted to the United States Department of Agriculture;

(ii) Crop insurance records of acreage planted and quantity harvested of biofuel crop; or

(iii) Additional documentation showing the actual yields of the biomass crop.

(B) Documentation indicating the biomass was used or is to be used to produce virgin oil or alcohol, as Biofuel, or to produce any other type of Biofuel may be submitted in place of receipts from the Biofuel Producer.

(d) Applicants that physically transfer biomass to be processed into biofuel or used as biofuel in a manner that does not allow for weighing of the biomass, and is not detailed above, must supply documentation indicating the amount of biomass as measured by metering equipment or a similar device.

(A) Applicants must provide documentation, including manufacturer's specifications which indicate the measurements are accurate and reliable.

(B) Metering equipment or similar device must be calibrated according to the manufacturer's specifications and the calibration records must be maintained for a period of no less than five years.

(2) The Department may require the applicant to provide further information as needed to complete a review of the application and verify compliance with statute and these rules.

(3) The Department may refund up to 75 percent of the application fee if an applicant withdraws their application prior to review by Department. Only refunds that are \$50 or greater will be issued.

(4) The Department may require the applicant to pay reasonable costs, not to exceed actual costs, incurred in connection with reviewing the application that exceed the original application fee and which the Director determines are incurred solely in connection with processing the application. The Department shall advise the applicant of any additional costs the applicant must pay before the Department incurs the costs.

(5) The applicant must maintain records of the application and any supporting documentation for a period of not less than five years from the date of application.

Stat. Auth.: ORS 351.141 & 469.791

Stats. Implemented: ORS 351.141 & 469.791

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-170-0060

Certification and Denial

(1) If the Department approves an application, the Director will issue a Certificate to the applicant identifying the name of the Certificate holder, the biomass, and the amount of the tax credit certified.

(2) If the Department does not approve an application, the Director will provide written notice of denial, including a statement of the findings and reasons for the denial, by mail. The Department may deny the application if:

(a) The application does not comply with applicable statutory provisions and rules.

(b) The applicant does not provide information requested by the Department within a reasonable time;

(3) The applicant may request reconsideration in writing no later than 60 days after the Director issues a decision denying an application.

Stat. Auth.: ORS 351.141 & 469.791

Stats. Implemented: ORS 351.141 & 469.791

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

330-170-0070

Minimum Discount Value

The minimum discounted value of a tax credit issued under ORS 315.141 is 90% of the amount of the tax credit.

Stat. Auth.: ORS 351.141 & 469.791

Stats. Implemented: ORS 351.141 & 469.791

Hist.: DOE 9-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

ADMINISTRATIVE RULES

Department of Environmental Quality Chapter 340

Rule Caption: Rules establishing Plan Initiation levels for Pollutants on the Priority Persistent Pollutant List.

Adm. Order No.: DEQ 6-2010

Filed with Sec. of State: 7-6-2010

Certified to be Effective: 7-6-10

Notice Publication Date: 1-1-2010

Rules Adopted: 340-045-0100

Subject: Senate Bill 737, adopted during the 2007 legislative session, requires municipal permittees prepare reduction plans for persistent pollutants in their wastewater that exceed Maximum Contaminant Levels. The law authorizes the EQC to adopt rules to identify the pollutants a persistent pollutant reduction plan must address for priority persistent pollutants without an established Maximum Contaminant Level. The rule establishes the levels of persistent pollutants in municipal wastewater that trigger the requirement to prepare a persistent pollutant reduction plan if exceeded.

Rules Coordinator: Maggie Vandehey—(503) 229-6878

340-045-0100

Initiation Level Rule

(1) Definitions. The definitions in ORS 468B.138 are adopted by reference. In addition, for purposes of this rule, the following definitions apply:

(a) "Persistent Pollutants" are substances that are toxic and that either persist in the environment or accumulate in the tissues of humans, fish, wildlife or plants, and are listed in Column 2 of Table A.

(b) "Permittee" means a municipality in possession of a National Pollutant Discharge Elimination System or water pollution control facility permit issued by the DEQ pursuant to ORS 468B.050 for a sewage treatment facility that has a dry weather design flow capacity of one million gallons per day or more.

(c) "Initiation level" is the concentration of a persistent pollutant in a permittee's effluent that, if exceeded, necessitates the preparation of a persistent pollutant reduction plan under ORS 468B.140.

(2) Initiation levels.

(a) Initiation levels for persistent pollutants are those values contained in Table A, or the analytical quantitation limit (concentration at which quantitative results can be reported with a high degree of confidence), whichever is higher.

(b) Initiation levels are not standards of quality and purity for the waters of this state for the purposes of ORS 468B.048 or the federal Clean Water Act.

(c) Except as specified in subsection (f), each permittee must measure the concentration of the persistent pollutants listed in Table A in its effluent, compare the results of these measurements to the initiation levels, determine whether any persistent pollutant exceeds its initiation level, and document this proposed determination in a report to the Department. For existing permittees, the report must be filed no later than 60 calendar days after receipt of laboratory results. For permittees that first become subject to this rule after its effective date, the report must be filed within 18 months after the permittee becomes subject to the rule.

(d) The Department will review this report to verify that the proposed determination is based on reliable information. If the Department finds that the proposed determination is not based on reliable information, the Department will make an independent determination of whether a initiation level has been exceeded.

(e) Each permittee must prepare and submit to the Department a written persistent pollutant reduction plan in accordance with ORS 468B.140(1)(a) addressing persistent pollutants that exceed the initiation level. For existing permittees, the plan must be submitted no later than July 1, 2011. For permittees that first become subject to this rule after the effective date of this rule, the plan must be submitted to the Department within six months after the report is submitted, or, if the Department makes an independent determination, six months from the date of the Department's independent determination or within a timeframe established by the Department.

(f) The Department may suspend, by written order, the requirement to measure or develop a persistent pollutant reduction plan for a listed persistent pollutant if the Department determines it is not technically practicable to measure the pollutant in effluent or if the Department removes a pollutant from the Priority Persistent Pollutant List. If, based on additional

monitoring done pursuant to a persistent pollutant reduction plan, the Department determines that it is unlikely that a pollutant exists in a permittee's effluent, the Department may allow the permittee to withdraw the pollutant from inclusion in the persistent pollutant reduction plan.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 468.020 & 468B.141

Stats. Implemented: ORS 468B.138 - 468B.144

Hist.: DEQ 6-2010, f. & cert. ef. 7-6-10

Department of Fish and Wildlife Chapter 635

Rule Caption: Bag Limit for Adipose Fin-Clipped Steelhead Increased On the Clackamas and Sandy Rivers.

Adm. Order No.: DFW 84-2010(Temp)

Filed with Sec. of State: 6-17-2010

Certified to be Effective: 6-18-10 thru 10-31-10

Notice Publication Date:

Rules Amended: 635-017-0090

Rules Suspended: 635-017-0090(T)

Subject: This amended rule is needed to allow recreational fishers increased opportunities to harvest the excess hatchery summer steelhead that are returning to the Clackamas Fish Hatchery on the Clackamas River and the Sandy Hatchery on the Sandy River. These increased opportunities in the Clackamas and Sandy rivers will begin June 18 and extend through October 31, 2010.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-017-0090

Inclusions and Modifications

(1) The **2010 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 **2010 Oregon Sport Fishing Regulations**.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

(3) The Tualatin River (Clackamas/Washington Co.):

(a) From the mouth upstream to the Highway 210 Bridge at Scholls: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; use of bait allowed May 22 through October 31. Open for coho salmon August 1 through October 31.

(b) From Highway 210 Bridge at Scholls upstream to Highway 47 Bridge at Gaston: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures. Open for coho salmon August 1 through October 31.

(c) Tualatin River and tributaries upstream from Highway 47 Bridge and Tualatin River Basin tributaries not listed in the 2010 Oregon Sport Fishing Regulations: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures.

(d) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(4) Yamhill River (Yamhill Co.):

(a) From the mouth upstream to the confluence of North and South forks of the Yamhill River: Open to angling for warmwater game fish March 1 through October 31; Open for trout May 22 through October 31;

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2 trout per day; 8-inch minimum length; Use of bait allowed March 1 through October 31. Open for coho salmon August 1 through October 31.

(b) South Yamhill River from the confluence with North Yamhill River upstream to the mouth of Rock Creek near the town of Grande Ronde: Open for trout May 22 through October 31; limit 5 trout per day, of which no more than 2 may be non fin-clipped trout; 8-inch minimum length for all trout; angling restricted to artificial flies and lures. Open for coho salmon August 1 through October 31.

(c) South Yamhill River above Rock Creek and all Yamhill, South Yamhill, and North Yamhill rivers tributaries not listed in the 2010 Oregon Sport Fishing Regulations: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures.

(d) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(5) Gales Creek (Tualatin River tributary, Washington Co.):

(a) From the mouth upstream to NW Clapshaw Hill Road in Gales Creek: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures. Open for coho salmon August 1 through October 31.

(b) Upstream of NW Clapshaw Hill Road and tributaries not listed in the 2010 Oregon Sport Fishing Regulations: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures.

(c) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(6) Clackamas, Sandy, and Lower Willamette (below the falls) rivers:

(a) Effective June 18, through October 31, 2010 the daily bag limit for adult fin-clipped salmon or adult fin-clipped steelhead is 2 per day, 20 per year; 5 jacks per day, 2 daily jack limits in possession, with the exception that in the Clackamas, Sandy, and Lower Willamette rivers one additional adipose fin-clipped steelhead may be retained for a total aggregate of three fish harvested daily.

(b) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. f. 1-1-94; FWC 3-1994, f. 1-25-94, cert. f. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. f. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. f. 11-1-94; FWC 22-1995, f. 3-7-95, cert. f. 3-10-95; FWC 32-1995, f. & cert. f. 4-24-95; FWC 77-1995, f. 9-13-95, cert. f. 1-1-96; FWC 14-1996, f. 3-29-96, cert. f. 4-1-96; FWC 20-1996, f. & cert. f. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. f. 5-10-96; FWC 72-1996, f. 12-31-96, cert. f. 1-1-97; FWC 5-1997, f. & cert. f. 2-4-97; FWC 13-1997, f. 3-5-97, cert. f. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. f. 4-1-97; FWC 24-1997(Temp), f. & cert. f. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. f. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. f. 6-18-97; FWC 69-1997, f. & cert. f. 11-6-97; FWC 75-1997, f. 12-31-97, cert. f. 1-1-98; DFW 19-1998, f. & cert. f. 3-12-98; DFW 28-1998(Temp), f. & cert. f. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. f. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. f. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. f. 5-4-98; DFW 35-1998(Temp), f. & cert. f. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. f. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. f. 1-1-99; DFW 15-1999, f. & cert. f. 3-9-99; DFW 16-1999(Temp), f. & cert. f. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. f. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. f. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. f. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. f. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. f. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. f. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. f. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. f. 1-1-00; DFW 13-2000, f. & cert. f. 3-20-00; DFW 22-2000, f. 4-14-00, cert. f. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. f. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. f. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. f. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. f. 2-1-01; DFW 6-2001, f. & cert. f. 3-1-01; DFW 23-2001(Temp), f. & cert. f. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. f. 5-1-01; DFW 40-2001(Temp), f. & cert. f. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. f. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. f. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. f. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. f. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. f. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. f. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. f. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. f. 3-21-02; DFW 37-2002, f. & cert. f. 4-23-02; DFW 42-2002, f. & cert. f. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. f. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. f. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. f. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. f. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. f. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. f. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. f. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. f. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. f. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. f. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. f. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. f. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. f. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. f. 1-1-04; DFW 33-2004, f. 4-22-04, cert. f. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. f. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. f. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. f. 1-1-05; DFW 24-2005, f. 4-15-05, cert. f. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. f. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. f. 1-1-06; DFW 36-2006(Temp), f. & cert. f. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. f. 1-1-07; DFW 121-2006(Temp), f. & cert. f. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. f. 6-1-07; DFW 65-2007(Temp), f. & cert. f. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. f. 10-6-07 thru 11-30-07; Administrative correction

12-20-07; DFW 134-2007, f. 12-26-07, cert. f. 1-1-08; DFW 136-2007, f. 12-31-07, cert. f. 1-1-08; DFW 1-2008(Temp), f. & cert. f. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. f. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. f. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. f. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. f. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. f. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. f. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. f. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. f. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. f. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. f. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. f. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. f. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. f. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. f. 10-5-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. f. 1-1-10; DFW 61-2010, f. & cert. f. 5-14-10; DFW 62-2010(Temp), f. 5-14-10, cert. f. 5-22-10 thru 11-17-10; DFW 84-2010(Temp), f. 6-17-10, cert. f. 6-18-10 thru 10-31-10

Rule Caption: Amend Rocky Mountain goat hunt table to reflect 2010 hunts.

Adm. Order No.: DFW 85-2010(Temp)

Filed with Sec. of State: 6-21-2010

Certified to be Effective: 6-21-10 thru 12-17-10

Notice Publication Date:

Rules Amended: 635-067-0000

Subject: Establish 2010 controlled hunt tag numbers for the hunting of Rocky Mountain goat.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-067-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2010 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2010 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted arms and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2010 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

[ED. NOTE: Tables referenced are available from the agency.]

[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 65-1989, f. & cert. f. 8-15-89; FWC 35-1996, f. & cert. f. 6-7-96; FWC 9-1997, f. & cert. f. 2-27-97; FWC 38-1997, f. & cert. f. 6-17-97; FWC 71-1997, f. & cert. f. 12-29-97; DFW 49-1998, f. & cert. f. 6-22-98; DFW 1-1999, f. & cert. f. 1-14-99; DFW 47-1999, f. & cert. f. 6-16-99; DFW 92-1999, f. 12-8-99, cert. f. 1-1-00; DFW 30-2000, f. & cert. f. 6-14-00; DFW 82-2000, f. 12-21-00, cert. f. 1-1-01; DFW 47-2001, f. & cert. f. 6-13-01; DFW 121-2001, f. 12-24-01, cert. f. 1-1-02; DFW 59-2002, f. & cert. f. 6-11-02; DFW 2-2003, f. & cert. f. 1-17-03; DFW 50-2003, f. & cert. f. 6-13-03; DFW 118-2003, f. 12-4-03, cert. f. 1-1-04; DFW 53-2004, f. & cert. f. 6-16-04; DFW 122-2004, f. 12-21-04, cert. f. 1-1-05; DFW 53-2005, f. & cert. f. 6-14-05; DFW 128-2005, f. 12-1-05, cert. f. 1-1-06; DFW 41-2006, f. & cert. f. 6-14-06; DFW 127-2006, f. 12-7-06, cert. f. 1-1-07; DFW 42-2007, f. & cert. f. 6-14-07; DFW 118-2007, f. 10-31-07, cert. f. 1-1-08; DFW 60-2008, f. & cert. f. 6-12-08; DFW 150-2008, f. 12-18-08, cert. f. 1-1-09; DFW 66-2009, f. & cert. f. 6-10-09; DFW 140-2009, f. 11-3-09, cert. f. 1-1-10; DFW 83-2010, f. & cert. f. 6-15-10; DFW 85-2010(Temp), f. & cert. f. 6-21-10 thru 12-17-10

Rule Caption: Lower Deschutes River Sport Fall Chinook Fishery Opens July 1st.

Adm. Order No.: DFW 86-2010(Temp)

Filed with Sec. of State: 6-23-2010

Certified to be Effective: 7-1-10 thru 10-31-10

Notice Publication Date:

Rules Amended: 635-018-0090

Rules Suspended: 635-018-0090(T)

Subject: Amended rule allows the sport harvest of fall Chinook salmon in the Lower Deschutes River starting July 1, 2010.

Rules Coordinator: Therese Kucera—(503) 947-6033

ADMINISTRATIVE RULES

635-018-0090

Inclusions and Modifications

(1) The **2010 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 **2010 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 adipose fin-clipped Chinook salmon from April 1 through July 31, 2010.

(a) The catch limit is two adult adipose fin-clipped salmon and five adipose fin-clipped jack salmon per day. All non-adipose fin-clipped Chinook salmon must be released unharmed.

(b) It is unlawful to continue angling from Sherars Falls downstream to the upper railroad trestle after taking a daily bag limit of two adult Chinook salmon.

(3) The Hood River from the mouth to Powerdale Dam is open to angling for adipose fin-clipped Chinook salmon from April 15 through June 30, 2010.

(a) The catch limit for Chinook salmon is two adipose fin-clipped adults and five adipose fin-clipped jacks per day. All salmon that have not been adipose fin-clipped must be released unharmed.

(b) All other catch limits and restrictions remain unchanged from those listed for Hood River in the 2010 Oregon Sport Fishing Regulations.

(4) The Metolius River mainstem including Spring Creek, upstream from the Allingham Bridge and also in Spring Creek, is open to angling from May 22 through October 31, 2010. All other General, Statewide and Central Zone Regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(5) 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 to October 31, 2010. The catch limit for Chinook salmon is two adults and five jacks per day. Catch limits and restrictions applying to trout, steelhead, and coho remain unchanged from those listed in the 2010 Oregon Sport Fishing Regulations for Area 1 of the Deschutes River.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; 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

Rule Caption: Columbia River Treaty Tribes Summer Salmon Gillnet Fisheries Above Bonneville Dam.

Adm. Order No.: DFW 87-2010(Temp)

Filed with Sec. of State: 6-25-2010

Certified to be Effective: 6-29-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-041-0076

Rules Suspended: 635-041-0076(T)

Subject: This amended rule allows the sales of fish caught in the Columbia River summer Treaty Indian gillnet fisheries above and Bonneville Dam. Two 60-hour (2.5 days) fishing periods were authorized for the commercial gillnet season in all of Zone 6. These periods are from 6:00 a.m. Tuesday, June 29 through 6:00 p.m. Thursday, July 1, 2010; and from 6:00 a.m. Tuesday, July 6 through 6:00 p.m. Thursday, July 8, 2010. Allowable sales include: Chinook, coho, and sockeye salmon; steelhead; walleye; carp; yellow perch; catfish; bass; and shad. White sturgeon may be kept for subsistence in all fisheries except the platform and hook-and-line fisheries conducted below Bonneville Dam where sturgeon may not be retained. Revisions are consistent with action taken by the Columbia River Compact agencies of Oregon and Washington, in cooperation with the Yakama Nation, Warm Springs Tribes, and Umatilla Tribes on June 24, 2010.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0076

Summer Salmon Season

(1) The commercial platform and hook-and-line fisheries and the Yakama, Warm Springs and Umatilla tribal subsistence fisheries downstream of Bonneville Dam (bank fishing only) conducted under agreements with the states of Oregon and Washington open 6:00 a.m. Wednesday, June 16, 2010. The commercial platform and hook-and-line fisheries above Bonneville Dam (Zone 6) open 6:00 a.m. Wednesday, June 16, 2010.

(a) Allowable sales include Chinook, steelhead, sockeye, coho, walleye, shad, yellow perch, bass and carp. Sturgeon caught in the tribal fisheries below Bonneville Dam may not be retained or sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use. Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE property for sale.

(b) Gear is restricted to subsistence fishing gear:

(A) In Zone 6: hoopnets, dipnets and rod and reel with hook-and-line are allowed; and

(B) Below Bonneville Dam: hoopnets, dipnets, spears, gaffs, clubs, fouling hooks and rod and reel with hook-and-line are allowed.

(c) Salmon, steelhead, walleye, shad, carp, bass and yellow perch landed during an open commercial fishing period may be sold at any time.

(d) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 and remain in effect. Closed areas downstream of Bonneville Dam, are as set forth in OAR 635-041-0015 and remain in effect.

(2) Commercial sales of gill net caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Tuesday, June 29 through 6:00 p.m. Thursday, July 1, 2010 (2.5 days) and 6:00 a.m. Tuesday, July 6 through 6:00 p.m. Thursday, July 8, 2010 (2.5 days).

(a) No minimum mesh size restriction is in effect.

(b) Allowable sales include Chinook, steelhead, sockeye, walleye, shad, yellow perch, bass and carp.

(c) Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use.

(d) Salmon, steelhead, walleye, shad, carp, bass and yellow perch landed during an open commercial fishing period may be sold at any time.

(e) All standard river mouth and dam sanctuaries in Zone 6, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(3) Sales of salmon, steelhead, walleye, shad, carp, bass and yellow perch caught in Yakama Nation tributary fisheries in the Wind River, Big White Salmon River, Klickitat River, and Icicle Creek during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods are allowed.

(4) Until further notice, sales of adipose fin-clipped Chinook salmon, caught in Nez Perce tributary fisheries in the Snake River Basin Tributary Treaty Area, including treaty spring fisheries in the Imnaha and Grande

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Ronde subbasins, may be sold during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods.

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

Rule Caption: Recreational Sturgeon and Sockeye Salmon Fisheries in the Columbia River Mainstem.

Adm. Order No.: DFW 88-2010(Temp)

Filed with Sec. of State: 6-25-2010

Certified to be Effective: 6-26-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-023-0095, 635-023-0128

Rules Suspended: 635-023-0095(T), 635-023-0125(T)

Subject: This amended rule extends the date until which white sturgeon may be retained in the Columbia River from the Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay, from June 26 to July 11. And, rule modifications also allow the retention of sockeye salmon in the mainstem Columbia River from the Astoria-Megler Bridge upstream to Priest Rapids Dam effective June 26 through July 31, 2010. Revisions are consistent with action taken June 24, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The **2010 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 **2010 Oregon Sport Fishing Regulations**.

(2) The mainstem Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette River upstream to Willamette Falls and Multnomah Channel, is open to the retention of white sturgeon with a fork length of 38-54 inches, three days per week, Thursdays through Saturdays, during the following periods:

(a) January 1 through July 31; and

(b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) January 1 through April 30;

(b) May 22 through June 26; and

(c) June 27 through July 11 (or until guideline is met).

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 21, and from July 12 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38–54 inches may be retained.

(7) During the fishing period as identified in subsections (4)(b) and (4)(c) of this rule, only white sturgeon with a fork length of 41–54 inches may be retained.

(8) The Columbia River upstream from Bonneville Dam:

(a) Effective 12:01 a.m. Sunday, February 21, 2010 the retention of white sturgeon in the Bonneville Pool is prohibited.

(b) Effective 12:01 a.m. Monday, March 1, 2010 the retention of white sturgeon in John Day Pool is prohibited.

(c) Effective 12:01 a.m. Thursday, May 6, 2010 the retention of white sturgeon in The Dalles Pool is prohibited.

(9) Angling for sturgeon is prohibited from:

(a) Between the upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from April 29 through July 31, 2010;

(b) Bonneville Dam downstream to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to the Washington shore during May 1 through August 31;

(c) From Highway 395 Bridge upstream to McNary Dam May 1 through July 31; and

(d) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(10) Retention of green sturgeon is prohibited all year in all areas.

[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 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

635-023-0128

Summer Sport Fishery

(1) The **2010 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 **2010 Oregon Sport Fishing Regulations**.

(2) Notwithstanding all other specifications and restrictions in the **2010 Oregon Sport Fishing Regulations**:

(a) Effective June 16 through July 31 the mainstem Columbia River is open to the retention of adipose fin-clipped steelhead, adipose fin-clipped jack and adipose fin-clipped adult Chinook salmon from the Astoria-Megler Bridge upstream to the Oregon/Washington border.

(b) The combined daily bag limit for adult salmon and steelhead is two fish. Only adipose fin-clipped fish may be retained.

(3) The following restrictions apply to the season(s) described in section 2(a):

(a) Effective April 29 through July 31, 2010 the area between the upper and lower ends of Sand Island adjacent to Rooster Rock State Park and corresponding markers on the Oregon shoreline is closed to angling for all species.

(b) Effective 12:01 a.m. Saturday, May 8, 2010, the Youngs Bay, Deep River, and Blind Slough/Knapa Slough Select Area fishing areas, as described in the 2010 Oregon Sport Fishing Regulations pamphlet, will reopen to angling for salmon and steelhead.

(c) Effective 12:01 a.m. Saturday June 26 through 11:59 p.m. Saturday July 31, 2010 in the mainstem Columbia River from the Astoria-Megler Bridge upstream to the Oregon/Washington border the retention of sockeye salmon is allowed. All sockeye are considered adults and included

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in the daily bag limit for adults. The combined daily bag limit is two adults and five jacks.

(d) All non-adipose fin-clipped Chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

[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

Rule Caption: Three Rivers Closure Delayed From July 1 Until July 12, 2010.

Adm. Order No.: DFW 89-2010(Temp)

Filed with Sec. of State: 6-28-2010

Certified to be Effective: 7-1-10 thru 9-30-10

Notice Publication Date:

Rules Amended: 635-014-0090

Rules Suspended: 635-014-0090(T)

Subject: This amended rule delays the closure of Three Rivers from the mouth upstream to the hatchery weir deadline from July 1 until July 12, 2010. Angling for spring Chinook in the Nestucca River system, and in the Three Rivers, has been good so far this year. All signs are pointing to a robust return of hatchery spring Chinook into the Nestucca basin. In order to allow anglers this opportunity to harvest hatchery spring Chinook, we need to extend the angling season in Three Rivers.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-014-0090

Inclusions and Modifications

(1) The **2010 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 **2010 Oregon Sport Fishing Regulations**.

(2) The US Forest Service is scheduled to close access to Hebo Lake at 6:00 p.m. on Sunday May 2, 2010, so the lake may be drained and deepened as part of a project to make improvements to the lake. Access to the Lake is expected to re-open sometime in September 2010.

(a) Beginning Sunday, April 25 through Sunday, May 2, 2010 there are no length requirements or daily possession limits for trout in Hebo Lake.

(b) All other General Statewide and Northwest Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(3) The Trask River will be closed from Gold Creek, at the hatchery, 200 feet upstream and 900 feet downstream June 16 through November 30, 2010

(4) Three Rivers (Nestucca Basin) mainstem, from the mouth upstream to hatchery weir deadline, remains open through July 11, then closed from July 12 through September 30, 2010.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f.

& cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 44-2010(Temp), f. 4-20-10, cert. ef. 4-21-10 thru 9-30-10; DFW 73-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 9-30-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 89-2010(Temp), f. 6-28-10, cert. ef. 7-1-10 thru 9-30-10

Rule Caption: Recreational Sturgeon Fisheries in Multnomah Channel and the Gilbert River.

Adm. Order No.: DFW 90-2010(Temp)

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 7-5-10 thru 12-31-10

Notice Publication Date:

Rules Amended: 635-017-0095

Subject: Rule modifications allow inclusion of the Multnomah Channel and Gilbert River into the recreational white sturgeon season of the Willamette River in the area downstream from Willamette Falls. Revisions are consistent with action taken June 29, 2010 by the State of Oregon.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-017-0095

Sturgeon Season

(1) The **2010 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 **2010 Oregon Sport Fishing Regulations**.

(2) The Willamette River downstream of Willamette Falls (including Multnomah Channel and the Gilbert River) is open to the retention of white sturgeon three days per week, Thursday, Friday, and Saturday during the following periods:

(a) January 1 through March 31; and

(b) November 1 through December 31.

(3) The retention of white sturgeon in the areas identified in section (2) of this rule is prohibited April 1 through October 31.

(4) Bank angling is prohibited from the east shore of the Willamette River the entire year in the area beginning west of Highway 99E, at the northern-most extent of the parking area near the intersection of 8th Street and Highway 99E in Oregon City, approximately 290 feet downstream of the Oregon City/West Linn bridge (Hwy 43) and extending upstream approximately 1715 feet to the retaining wall extending into the Willamette River at the NW corner of the Blue Heron Paper Mill.

(5) Only white sturgeon with a fork length of 38-54 inches may be retained. Retention of green sturgeon is prohibited all year in all areas.

(6) Angling for sturgeon, including catch-and-release, is prohibited seven days per week during May 1 through August 31 from Willamette Falls downstream to the I-205 Bridge.

[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 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru

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12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 90-2010(Temp), f. 6-29-10, cert. ef. 7-5-10 thru 12-31-10

Rule Caption: Recreational Sturgeon Fisheries In the Columbia River Mainstem Above Bonneville Dam.

Adm. Order No.: DFW 91-2010(Temp)

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 8-1-10 thru 12-31-10

Notice Publication Date:

Rules Amended: 635-023-0095

Rules Suspended: 635-023-0095(T)

Subject: This amended rule prohibits retention of white sturgeon in the Columbia River from McNary Dam upstream to the Oregon/Washington border beginning August 1 through December 31, 2010. These rule modifications make Oregon's rules concurrent with the State of Washington's. Revisions are consistent with action taken June 29, 2010 by the State of Oregon.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The **2010 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 **2010 Oregon Sport Fishing Regulations**.

(2) The mainstem Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette River upstream to Willamette Falls and Multnomah Channel, is open to the retention of white sturgeon with a fork length of 38–54 inches, three days per week, Thursdays through Saturdays, during the following periods:

- (a) January 1 through July 31; and
- (b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

- (a) January 1 through April 30;
 - (b) May 22 through June 26; and
 - (c) June 27 through July 11 (or until guideline is met).
- (5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 21, and from July 12 through December 31.

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38-54 inches may be retained.

(7) During the fishing period as identified in subsections (4)(b) and (4)(c) of this rule, only white sturgeon with a fork length of 41-54 inches may be retained.

(8) The Columbia River upstream from Bonneville Dam:

(a) Effective 12:01 a.m. Sunday, February 21, 2010 the retention of white sturgeon in the Bonneville Pool is prohibited.

(b) Effective 12:01 a.m. Monday, March 1, 2010 the retention of white sturgeon in John Day Pool is prohibited.

(c) Effective 12:01 a.m. Thursday, May 6, 2010 the retention of white sturgeon in The Dalles Pool is prohibited.

(d) Effective 12:01 a.m. Sunday, August 1, 2010 the retention of white sturgeon is prohibited from McNary Dam upstream to the Oregon/Washington Border.

(9) Angling for sturgeon is prohibited from:

(a) Between the upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from April 29 through July 31, 2010;

(b) Bonneville Dam downstream to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to the Washington shore during May 1 through August 31;

(c) From Highway 395 Bridge upstream to McNary Dam May 1 through July 31; and

(d) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(10) Retention of green sturgeon is prohibited all year in all areas.

[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 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

Rule Caption: Amend rule regarding lethal take of wolves to deal with depredation.

Adm. Order No.: DFW 92-2010(Temp)

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 6-29-10 thru 12-25-10

Notice Publication Date:

Rules Amended: 635-110-0010

Subject: This rule describes the harassment and take of wolves allowed during the Phase I (Conservation) of the Oregon Wolf Conservation and Management Plan.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-110-0010

Harassment and Take of Wolves during Phase I (Conservation)

NOTE: As of February 11, 2005, these rules are pre-empted by the endangered status of the gray wolf under the federal Endangered Species Act. Once federal protections are reduced to a level below that of Oregon law, these rules will govern harassment and take of wolves in Oregon.

(1) This rule describes the types of harassment and take of wolves allowed by persons outside ODFW (or ODFW or Wildlife Services acting as their agent) during Phase I — (Conservation: 0–4 breeding pairs) as called for in chapter III of the Oregon Wolf Conservation and Management Plan. Other chapters of the Plan authorize ODFW to take wolves for other specified wildlife management purposes. For OAR 635-110-0010, 635-110-0020 and 635-110-0030, “livestock” means raites, psittacine, horses, jackasses, cattle, llamas, alpacas, sheep, goats, swine, domesticated fowl, any fur-bearing animal bred and maintained (commercially or otherwise) within pens, cages and hutches, bison and working dogs. “Working dogs” means guarding dogs and herding dogs.

(2) Non-injurious harassment.

(a) Subject to the conditions specified in paragraph (c), the following persons may use non-injurious harassment against wolves without a permit:

(A) Landowners (or their agents) on their own land; or

(B) Grazing permittees legally using public land under valid livestock grazing allotments.

(b) Non-injurious harassment means scaring off a wolf (or wolves) without doing bodily harm, and includes (but is not limited to) firing shots in the air, making loud noises or otherwise confronting the wolf (or wolves).

(c) Non-injurious harassment is allowed without a permit under this rule only if:

(A) The wolf (or wolves) is in the act of testing or chasing livestock, is attempting to test or chase livestock or is in close proximity of livestock;

(B) The person encounters the wolf (or wolves) unintentionally (i.e., the person is not stalking or searching for wolves);

(C) The harassment in fact does not result in injury to the wolf (or wolves); and

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(D) The harassment is reported to ODFW within 48 hours.
(d) Any non-injurious harassment that does not meet each requirement of this rule requires a permit in advance from ODFW.

(3) Non-lethal injurious harassment.

(a) Subject to the conditions specified in paragraph (c), in addition to state or state authorized agents, the following persons may use non-lethal injurious harassment against wolves by permit:

(A) Landowners (or their designated agents) on their own land;

(B) Grazing permittees legally using public land under valid livestock grazing allotments.

(b) Non-lethal injurious harassment means scaring off a wolf (or wolves) without killing but with some injury to the wolf. Wolves may be pursued (unintentional encounters are not required).

(c) Non-lethal injurious harassment is allowed by permit from ODFW only if:

(A) ODFW confirms persistent wolf activity or wolf depredation on livestock in the area. "Persistent wolf activity" means loitering, testing, worrying, or otherwise disrupting livestock during a 48 hour period;

(B) The applicant confers with ODFW to determine the most effective harassment method;

(C) ODFW considers the location of known den sites;

(D) The harassment in fact does not result in the death of a wolf;

(E) No unreasonable circumstances exist that attract wolf/livestock conflict; and

(E) The harassment is reported to ODFW within 48 hours.

(d) Permits for non-lethal injurious harassment remain valid for the livestock grazing season in which issued, provided the livestock operator complies with all applicable laws, including permit conditions. The agency shall inform harassment permit holders of non-lethal methods for minimizing wolf-livestock conflict and provide assistance upon request. Receiving future lethal control permits is contingent upon documentation of efforts to use non-lethal methods.

(4) Relocation. ODFW will authorize relocation by state personnel when a wolf (or wolves) becomes inadvertently involved in a situation, or is present in an area, that could result in conflict with humans or harm to the wolf. The relocation will be designed to prevent conflict with humans or reduce the possibility of harm to the wolf. The wolf (or wolves) would be relocated to the nearest wilderness area at the direction of ODFW.

(5) Lethal take of wolves in the act of attacking livestock.

(a) Subject to the conditions specified in paragraph (c) and with a permit from ODFW, the following persons may use lethal force against wolves in the act of attacking livestock:

(A) Landowners (or their agents) on their own land; or

(B) Grazing permittees using public land.

(b) A wolf is "in the act of attacking livestock" if it is biting, wounding or killing livestock.

(c) Lethal force is allowed by permit from ODFW only if:

(A) ODFW confirms that wolves previously have wounded or killed livestock in the area and efforts to resolve the problem have been deemed ineffective;

(B) The wolf is seen in the act of attacking, not testing or scavenging;

(C) There is fresh evidence of the attack (e.g., visible wounds, tracks demonstrating a chase occurred);

(D) The wolf carcass is not removed or disturbed;

(E) The use of lethal force is reported to ODFW or Wildlife Services within 24 hours;

(F) No unreasonable circumstances exist that attract wolf/livestock conflict; and

(G) Either ODFW or Wildlife Services confirms that the wound was caused by a wolf (or wolves).

NOTE: The Oregon Wolf Conservation and Management Plan calls for allowing lethal take of wolves in this situation *without a permit on private land*. However, the Plan recognizes that because current statute requires a permit, implementing this portion of the Plan depends upon amendment of the statute by the 2005 legislature. Should the legislature make that statutory change, the Commission will amend this rule to allow for take without permit.

(6) Lethal take to deal with chronic depredation.

(a) ODFW may authorize its personnel, authorized agents, or Wildlife Services, to use lethal force on wolves at a property owner or permittee's request if:

(A) ODFW confirms either:

(i) Two confirmed depredations by wolves on livestock in the area; or

(ii) One confirmed depredation followed by an attempted depredation (testing or stalking) in the area ;

(B) The requester documents unsuccessful attempts to solve the situation through non-lethal means;

(C) No unreasonable conditions exist to cause the wolf-livestock conflict; and

(D) The requester has complied with applicable laws and the conditions of any harassment or take permit.

(b) When authorized, lethal take under this paragraph will be taken only by ODFW, authorized ODFW agents, or Wildlife Services personnel.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.171 - 496.192, 497.298, 497.308, 498.002, 498.006, 498.012 & 498.026

Hist.: DFW 12-2005, f. & cert. ef. 3-9-05; DFW 92-2010(Temp), f. & cert. ef. 6-29-10 thru 12-25-10

Rule Caption: Adopt Temporary Rules Governing Confidentiality and Inadmissibility of Mediation Communications in Subsequent Adjudicatory Proceedings.

Adm. Order No.: DFW 93-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-26-10

Notice Publication Date:

Rules Adopted: 635-001-0410

Subject: This rule is identical to the rule on confidentiality of mediation communications, developed by the Attorney General pursuant to ORS 36.224(2). The rule covers all mediations involving the Oregon Fish and Wildlife Commission, except those express exclusions. The rule limits information that the mediator may disclose and allows the parties to agree in writing to limit what may be disclosed or used in a subsequent Adjudicatory proceeding.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-001-0410

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

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(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 635-001-0410(7) and this agreement. This agreement relates to the following mediation:

- a) _____
(Identify the mediation to which this agreement applies.)
- b) To the extent authorized by OAR 635-001-0410(7), mediation communications in this mediation are: (check one or more)

_____ confidential and may not be disclosed to any other person not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

_____ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

c) _____
Name of Agency

Signature of Agency's authorized representative Date
(when agency is a party) or Agency employee
acting as the mediator (when Agency is mediating the dispute)

d) _____
Name of party to the mediation

Signature of party's authorized representative Date

e) _____
Name of party to the mediation

Signature of party's authorized representative Date

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of

the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation, or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation, or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712, or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) attorney client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege, or

(B) Attorney work product prepared in anticipation of litigation or for trial, or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency, or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation, or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

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(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Authority: ORS 36.224
Stat. Implemented: ORS 36.224, 36.228, 36.230 & 36.232
Hist.: DFW 93-2010(Temp), f. & cert. ef. 7-1-10 thru 12-26-10

Rule Caption: Additional Opportunity for Personal Use Harvest of Pacific Lamprey at Willamette Falls Allowed.

Adm. Order No.: DFW 94-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 10-31-10

Notice Publication Date:

Rules Amended: 635-017-0090

Rules Suspended: 635-017-0090(T)

Subject: This amended rule allows for one additional day for personal use harvest of Pacific lamprey by individuals with the required permit. The season modifications provide opportunity for harvest of lamprey that may become stranded due to the scheduled installation of water flow devices at Willamette Falls.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-017-0090

Inclusions and Modifications

(1) The **2010 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 **2010 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; except personal use harvest is permitted on Tuesday, July 6, 2010 from 7:00 a.m. to 6:00 p.m.;

(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) The Tualatin River (Clackamas/Washington Co.):

(a) From the mouth upstream to the Highway 210 Bridge at Scholls: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; use of bait allowed May 22 through October 31. Open for coho salmon August 1 through October 31.

(b) From Highway 210 Bridge at Scholls upstream to Highway 47 Bridge at Gaston: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures. Open for coho salmon August 1 through October 31.

(c) Tualatin River and tributaries upstream from Highway 47 Bridge and Tualatin River Basin tributaries not listed in the 2010 Oregon Sport Fishing Regulations: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures.

(d) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(4) Yamhill River (Yamhill Co.):

(a) From the mouth upstream to the confluence of North and South forks of the Yamhill River: Open to angling for warmwater game fish March 1 through October 31; Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; Use of bait allowed March 1 through October 31. Open for coho salmon August 1 through October 31.

(b) South Yamhill River from the confluence with North Yamhill River upstream to the mouth of Rock Creek near the town of Grande Ronde: Open for trout May 22 through October 31; limit 5 trout per day, of which no more than 2 may be non fin-clipped trout; 8-inch minimum length for all trout; angling restricted to artificial flies and lures. Open for coho salmon August 1 through October 31.

(c) South Yamhill River above Rock Creek and all Yamhill, South Yamhill, and North Yamhill rivers tributaries not listed in the 2010 Oregon Sport Fishing Regulations: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures.

(d) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(5) Gales Creek (Tualatin River tributary, Washington Co.):

(a) From the mouth upstream to NW Clapshaw Hill Road in Gales Creek: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures. Open for coho salmon August 1 through October 31.

(b) Upstream of NW Clapshaw Hill Road and tributaries not listed in the 2010 Oregon Sport Fishing Regulations: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures.

(c) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(6) Clackamas, Sandy, and Lower Willamette (below the falls) rivers:

(a) Effective June 18, through October 31, 2010 the daily bag limit for adult fin-clipped salmon or adult fin-clipped steelhead is 2 per day, 20 per year; 5 jacks per day, 2 daily jack limits in possession, with the exception that in the Clackamas, Sandy, and Lower Willamette rivers one additional adipose fin-clipped steelhead may be retained for a total aggregate of three fish harvested daily.

(b) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; 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. & cert. ef. 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.

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ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 61-2010, f. & cert. ef. 5-14-10; DFW 62-2010(Temp), f. 5-14-10, cert. ef. 5-22-10 thru 11-17-10; DFW 84-2010(Temp), f. 6-17-10, cert. ef. 6-18-10 thru 10-31-10; DFW 94-2010(Temp), f. & cert. ef. 7-1-10 thru 10-31-10

Rule Caption: Sport Chinook Fisheries on the Imnaha and Wallowa Rivers Extended.

Adm. Order No.: DFW 95-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-11-10 thru 9-1-10

Notice Publication Date:

Rules Amended: 635-019-0090

Rules Suspended: 635-019-0090(T)

Subject: This amended rule extends until further notice, the opportunity for sport anglers to harvest adipose fin-clipped adult and jack Chinook salmon which are in excess of the Department's hatchery production needs, in the Imnaha and Wallowa rivers. The original ending date for this fishery was Sunday, July 11, 2010.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The **2010 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 **2010 Oregon Sport Fishing Regulations**.

(2) 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 May 22 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 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 **2010 Oregon Sport Fishing Regulations**, remain in effect.

(3) 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 May 22 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 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 **2010 Oregon Sport Fishing Regulations**, remain in effect.

[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 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

Rule Caption: Additional Opportunity for Personal Use Harvest of Pacific Lamprey at Willamette Falls Allowed.

Adm. Order No.: DFW 96-2010(Temp)

Filed with Sec. of State: 7-7-2010

Certified to be Effective: 7-8-10 thru 10-31-10

Notice Publication Date:

Rules Amended: 635-017-0090

Rules Suspended: 635-017-0090(T)

Subject: This amended rule allows for one additional day, Thursday July 8, 2010, for personal use harvest of Pacific lamprey by individuals with the required permit. The season modifications provide opportunity for harvest of lamprey that may become stranded due to the scheduled installation of water flow devices at Willamette Falls.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-017-0090

Inclusions and Modifications

(1) The **2010 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 **2010 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; except personal use harvest is permitted on Tuesday, July 6, 2010 and Thursday, July 8, 2010 from 7:00 a.m. to 6:00 p.m.;

(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) The Tualatin River (Clackamas/Washington Co.):

(a) From the mouth upstream to the Highway 210 Bridge at Scholls: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; use of bait allowed May 22 through October 31. Open for coho salmon August 1 through October 31.

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(b) From Highway 210 Bridge at Scholls upstream to Highway 47 Bridge at Gaston: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures. Open for coho salmon August 1 through October 31.

(c) Tualatin River and tributaries upstream from Highway 47 Bridge and Tualatin River Basin tributaries not listed in the 2010 Oregon Sport Fishing Regulations: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures.

(d) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(4) Yamhill River (Yamhill Co.):

(a) From the mouth upstream to the confluence of North and South forks of the Yamhill River: Open to angling for warmwater game fish March 1 through October 31; Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; Use of bait allowed March 1 through October 31. Open for coho salmon August 1 through October 31.

(b) South Yamhill River from the confluence with North Yamhill River upstream to the mouth of Rock Creek near the town of Grande Ronde: Open for trout May 22 through October 31; limit 5 trout per day, of which no more than 2 may be non fin-clipped trout; 8-inch minimum length for all trout; angling restricted to artificial flies and lures. Open for coho salmon August 1 through October 31.

(c) South Yamhill River above Rock Creek and all Yamhill, South Yamhill, and North Yamhill rivers tributaries not listed in the 2010 Oregon Sport Fishing Regulations: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures.

(d) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(5) Gales Creek (Tualatin River tributary, Washington Co.):

(a) From the mouth upstream to NW Clapshaw Hill Road in Gales Creek: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures. Open for coho salmon August 1 through October 31.

(b) Upstream of NW Clapshaw Hill Road and tributaries not listed in the 2010 Oregon Sport Fishing Regulations: Open for trout May 22 through October 31; 2 trout per day; 8-inch minimum length; angling restricted to artificial flies and lures.

(c) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

(6) Clackamas, Sandy, and Lower Willamette (below the falls) rivers:

(a) Effective June 18, through October 31, 2010 the daily bag limit for adult fin-clipped salmon or adult fin-clipped steelhead is 2 per day, 20 per year; 5 jacks per day, 2 daily jack limits in possession, with the exception that in the Clackamas, Sandy, and Lower Willamette rivers one additional adipose fin-clipped steelhead may be retained for a total aggregate of three fish harvested daily.

(b) All other General Statewide and Willamette Zone regulations, as provided in the 2010 Oregon Sport Fishing Regulations, remain in effect.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; 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; 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; FWC 19-1998, f. & cert. ef. 3-12-98; FWC 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; FWC 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; FWC 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; FWC 34-1998, f. & cert. ef. 5-4-98; FWC 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; FWC 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; FWC 100-1998, f. 12-23-98, cert. ef. 1-1-99; FWC 15-1999, f. & cert. ef. 3-9-99; FWC 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; FWC 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; FWC 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; FWC 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; FWC 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; FWC 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; FWC 78-1999, f. & cert. ef. 10-4-99; FWC 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; FWC 96-1999, f. 12-27-99, cert. ef. 1-1-00; FWC 13-2000, f. & cert. ef. 3-20-00; FWC 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; FWC 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; FWC 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; FWC 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; FWC 1-2001, f. 1-25-01, cert. ef. 2-1-01; FWC 6-2001, f. & cert. ef. 3-1-01; FWC 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; FWC 28-2001, f. & cert. ef. 5-1-01; FWC 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; FWC 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; FWC 70-2001, f. & cert. ef. 8-10-01; FWC 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; FWC 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; FWC 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; FWC 123-2001, f. 12-31-01, cert. ef. 1-1-02; FWC 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; FWC 26-2002, f. & cert. ef. 3-21-02; FWC 37-2002, f. &

cert. ef. 4-23-02; FWC 42-2002, f. & cert. ef. 5-3-02; FWC 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; FWC 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; FWC 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); FWC 130-2002, f. 11-21-02, cert. ef. 1-1-03; FWC 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; FWC 42-2003, f. & cert. ef. 5-16-03; FWC 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; FWC 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; FWC 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; FWC 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; FWC 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; FWC 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; FWC 125-2003, f. 12-11-03, cert. ef. 1-1-04; FWC 33-2004, f. 4-22-04, cert. ef. 5-1-04; FWC 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; FWC 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; FWC 117-2004, f. 12-13-04, cert. ef. 1-1-05; FWC 24-2005, f. 4-15-05, cert. ef. 5-1-05; FWC 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; FWC 136-2005, f. 12-7-05, cert. ef. 1-1-06; FWC 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; FWC 79-2006, f. 8-11-06, cert. ef. 1-1-07; FWC 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; FWC 32-2007, f. 5-14-07, cert. ef. 6-1-07; FWC 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; FWC 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-10-07; FWC 134-2007, f. 12-26-07, cert. ef. 1-1-08; FWC 136-2007, f. 12-31-07, cert. ef. 1-1-08; FWC 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; FWC 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; FWC 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; FWC 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; FWC 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; FWC 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; FWC 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; FWC 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; FWC 156-2008, f. 12-31-08, cert. ef. 1-1-09; FWC 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; FWC 15-2009, f. & cert. ef. 2-25-09; FWC 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; FWC 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; FWC 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; FWC 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; FWC 144-2009, f. 12-8-09, cert. ef. 1-1-10; FWC 61-2010, f. & cert. ef. 5-14-10; FWC 62-2010(Temp), f. 5-14-10, cert. ef. 5-22-10 thru 11-17-10; FWC 84-2010(Temp), f. 6-17-10, cert. ef. 6-18-10 thru 10-31-10; FWC 94-2010(Temp), f. & cert. ef. 7-1-10 thru 10-31-10; FWC 96-2010(Temp), f. 7-7-10, cert. ef. 7-8-10 thru 10-31-10

Rule Caption: Columbia River Treaty Tribes Summer Salmon Gillnet Fisheries Above Bonneville Dam Continued.

Adm. Order No.: DFW 97-2010(Temp)

Filed with Sec. of State: 7-8-2010

Certified to be Effective: 7-13-10 thru 7-31-10

Notice Publication Date:

Rules Amended: 635-041-0076

Rules Suspended: 635-041-0076(T)

Subject: This amended rule continues the allowed sales of fish caught in the Columbia River summer Treaty Indian gillnet fisheries above and Bonneville Dam. One 60-hour (2.5 days) fishing period was authorized for the commercial gillnet season in all of Zone 6. This period is from 6:00 a.m. Tuesday, July 13 through 6:00 p.m. Thursday, July 15, 2010. Allowable sales include: Chinook and sockeye salmon; steelhead; walleye; carp; yellow perch; bass; and shad. White sturgeon may be kept for subsistence in all fisheries except the platform and hook-and-line fisheries conducted below Bonneville Dam where sturgeon may not be retained. Revisions are consistent with action taken by the Columbia River Compact agencies of Oregon and Washington, in cooperation with the Columbia River Treaty Tribes on July 8, 2010.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0076

Summer Salmon Season

(1) The commercial platform and hook-and-line fisheries and the Yakama, Warm Springs and Umatilla tribal subsistence fisheries downstream of Bonneville Dam (bank fishing only) conducted under agreements with the states of Oregon and Washington open 6:00 a.m. Wednesday, June 16, 2010. The commercial platform and hook-and-line fisheries above Bonneville Dam (Zone 6) open 6:00 a.m. Wednesday, June 16, 2010.

(a) Allowable sales include Chinook, steelhead, sockeye, coho, walleye, shad, yellow perch, bass and carp. Sturgeon caught in the tribal fisheries below Bonneville Dam may not be retained or sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use. Fish may NOT be sold on USACE Property below Bonneville Dam, but may be caught and transported off USACE property for sale.

(b) Gear is restricted to subsistence fishing gear:

(A) In Zone 6: hoopnets, dipnets and rod and reel with hook-and-line are allowed; and

(B) Below Bonneville Dam: hoopnets, dipnets, spears, gaffs, clubs, fouling hooks and rod and reel with hook-and-line are allowed.

ADMINISTRATIVE RULES

(c) Salmon, steelhead, walleye, shad, carp, bass and yellow perch landed during an open commercial fishing period may be sold at any time.

(d) Closed areas in Zone 6, except the Spring Creek sanctuary, are as set forth in OAR 635-041-0045 and remain in effect. Closed areas downstream of Bonneville Dam, are as set forth in OAR 635-041-0015 and remain in effect.

(2) Commercial sales of gill net caught fish from Zone 6 of the mainstem Columbia River is allowed beginning 6:00 a.m. Tuesday, June 29 through 6:00 p.m. Thursday, July 1, 2010 (2.5 days); 6:00 a.m. Tuesday, July 6 through 6:00 p.m. Thursday, July 8, 2010 (2.5 days); and 6:00 a.m. Tuesday, July 13 through 6:00 p.m. Thursday, July 15, 2010 (2.5 days).

(a) No minimum mesh size restriction is in effect.

(b) Allowable sales include Chinook, steelhead, sockeye, walleye, shad, yellow perch, bass and carp.

(c) Sturgeon may not be sold. However, white sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be kept for subsistence use.

(d) Salmon, steelhead, walleye, shad, carp, bass and yellow perch landed during an open commercial fishing period may be sold at any time.

(e) All standard river mouth and dam sanctuaries in Zone 6, except the Spring Creek sanctuary, as set forth in OAR 635-041-0045 remain in effect.

(3) Sales of salmon, steelhead, walleye, shad, carp, bass and yellow perch caught in Yakama Nation tributary fisheries in the Wind River, Big White Salmon River, Klickitat River, and Icicle Creek during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods are allowed.

(4) Until further notice, sales of adipose fin-clipped Chinook salmon, caught in Nez Perce tributary fisheries in the Snake River Basin Tributary Treaty Area, including treaty spring fisheries in the Imnaha and Grande Ronde subbasins, may be sold during those days and hours when the tributaries are open under lawfully enacted tribal fishing periods.

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

Rule Caption: Amend rule regarding the authority to take or harass wildlife.

Adm. Order No.: DFW 98-2010(Temp)

Filed with Sec. of State: 7-9-2010

Certified to be Effective: 7-9-10 thru 1-3-11

Notice Publication Date:

Rules Amended: 635-043-0051

Rules Suspended: 635-043-0051(T)

Subject: This temporary rule clarifies sworn law enforcement officers' authority to take or harass wildlife for law enforcement activities.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-043-0051

Authority to Take or Harass Wildlife

(1) In accordance with ORS 496.012, 496.162, 497.298, 498.002, and 498.006, Department staff or their agents may take or harass wildlife in the times, places and manners necessary for:

- Scientific purposes pursuant to Department programs;
- Protection against a threat to human safety;
- Protection of land or property from damage;

(d) Wildlife management purposes pursuant to Department programs;

(e) Education and display purposes;

(f) Rehabilitation of sick, injured or orphaned wildlife; and

(g) Law enforcement activities by sworn law enforcement officers.

(2) Harassment means acts that frighten or chase but do not kill wildlife.

(3) ORS 498.126(1) provides that a person may not hunt game mammals or game birds from or with the aid of an aircraft, nor transmit from an aircraft to a person not in the aircraft information regarding the location of any game mammals or game birds. ORS 498.126(4) provides an exception for the Department of Fish and Wildlife, and its agents, when conducting wildlife management activities necessary for scientific research or, in emergency situations, protecting human safety, wildlife species or property. ORS 498.126(4)(b) requires definition of "emergency situation" and "necessary" by rule.

(a) "Emergency situation" means that the Department has determined that prompt action is required to implement a provision of a species management plan or administrative rule adopted by the Fish and Wildlife Commission.

(b) "Necessary" means that the Department has determined that the use of aircraft in a particular instance is the most efficient method of implementing a provision of a species management plan or administrative rule adopted by the Fish and Wildlife Commission.

Stat. Auth.: ORS 496

Stats. Implemented: ORS 496

Hist.: DFW 47-2001, f. & cert. ef. 6-13-01; DFW 12-2002, f. & cert. ef. 2-12-02; DFW 75-2010(Temp), f. & cert. ef. 6-2-10 thru 11-28-10; DFW 98-2010(Temp), f. & cert. ef. 7-9-10 thru 1-3-11

Rule Caption: Recreational Sturgeon Fishery In the Columbia River Mainstem Below Wauna Powerlines.

Adm. Order No.: DFW 99-2010(Temp)

Filed with Sec. of State: 7-13-2010

Certified to be Effective: 7-15-10 thru 12-31-10

Notice Publication Date:

Rules Amended: 635-023-0095

Rules Suspended: 635-023-0095(T)

Subject: This amended rule allows the recreational harvest of white sturgeon, seven days per week from Thursday, July 15 through Sunday, August 1, 2010, in the Columbia River from the Wauna powerlines downstream to the mouth at Buoy 10, including Youngs Bay and all adjacent Washington tributaries. These rule modifications are consistent with action taken July 13, 2010 by the Columbia River Compact agencies of Oregon and Washington.

Rules Coordinator: Therese Kucera—(503) 947-6033

635-023-0095

Sturgeon Season

(1) The **2010 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 **2010 Oregon Sport Fishing Regulations**.

(2) The mainstem Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam, excluding the lower Willamette River upstream to Willamette Falls and Multnomah Channel, is open to the retention of white sturgeon with a fork length of 38-54 inches, three days per week, Thursdays through Saturdays, during the following periods:

(a) January 1 through July 31; and

(b) October 1 through December 31.

(3) The retention of white sturgeon in the area identified in section (2) of this rule is prohibited August 1 through September 30.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of white sturgeon seven days per week during the following periods:

(a) January 1 through April 30;

(b) May 22 through June 26;

(c) June 27 through July 11; and

(d) July 15 through August 1 (or until guideline is met).

(5) The retention of white sturgeon in the area identified in section (4) of this rule is prohibited May 1 through May 21, July 12 through July 14, and from August 2 through December 31.

ADMINISTRATIVE RULES

(6) During the fishing period as identified in subsection (4)(a) of this rule, only white sturgeon with a fork length of 38–54 inches may be retained.

(7) During the fishing period as identified in subsections (4)(b) through (4)(d) of this rule, only white sturgeon with a fork length of 41–54 inches may be retained.

(8) The Columbia River upstream from Bonneville Dam:

(a) Effective 12:01 a.m. Sunday, February 21, 2010 the retention of white sturgeon in the Bonneville Pool is prohibited.

(b) Effective 12:01 a.m. Monday, March 1, 2010 the retention of white sturgeon in John Day Pool is prohibited.

(c) Effective 12:01 a.m. Thursday, May 6, 2010 the retention of white sturgeon in The Dalles Pool is prohibited.

(d) Effective 12:01 a.m. Sunday, August 1, 2010 the retention of white sturgeon is prohibited from McNary Dam upstream to the Oregon/Washington Border.

(9) Angling for sturgeon is prohibited from:

(a) Between the upper and lower ends of Sand Island and corresponding markers on the Oregon shoreline (slough at Rooster Rock State Park) from April 29 through July 31, 2010;

(b) Bonneville Dam downstream to a line crossing the Columbia River from Navigation Marker 82 on the Oregon shore through the upstream exposed end of Skamania Island, continuing in a straight line to the Washington shore during May 1 through August 31;

(c) From Highway 395 Bridge upstream to McNary Dam May 1 through July 31; and

(d) From the west end of the grain silo at Rufus upstream to John Day Dam during May 1 through July 31.

(10) Retention of green sturgeon is prohibited all year in all areas.

[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 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

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Rule Caption: Ocean Sport Pacific Halibut Nearshore Fishery Closed from Cape Falcon to Humbug Mountain.

Adm. Order No.: DFW 100-2010(Temp)

Filed with Sec. of State: 7-15-2010

Certified to be Effective: 7-17-10 thru 10-31-10

Notice Publication Date:

Rules Amended: 635-039-0085

Subject: This amended rule closes the nearshore (inside 40 fathoms) sport fishery for Pacific halibut, in the area between Cape Falcon and Humbug Mountain, at 11:59 p.m. on Saturday, July 17, 2010 when the nearshore quota of 12,284 pounds is projected to have been met. This rule is consistent with regulations that have been implemented by the federal government and the International Pacific Halibut Commission for the 2010 Oregon recreational 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 039 incorporates into Oregon Administrative Rules, by reference, modifications or additions to provisions determined by the IPHC and included in the International Pacific Halibut Commission's News Release dated February 1, 2010 and the Oregon Department of Fish and Wildlife's "Staff recommended 2010 PACIFIC HALIBUT SPORT REGULATIONS" dated February 10, 2010 and to the extent they are consistent with **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996) Vol. 75, No. 52**, dated March 18, 2010 as amended by Federal Regulations. Therefore, persons must consult the Federal Regulations in addition to Division 039 rules to determine applicable halibut fishing seasons.

(2) Effective 11:59 p.m., Saturday, July 17, 2010 the Central Oregon (Cape Falcon to Humbug Mountain) nearshore 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

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Department of Forestry

Chapter 629

Rule Caption: The adoption of revised Northwest and Southwest Oregon State Forest Management Plans.

Adm. Order No.: DOF 2-2010

Filed with Sec. of State: 6-22-2010

Certified to be Effective: 6-22-10

Notice Publication Date: 1-1-2010

Rules Amended: 629-035-0105

Subject: The amended 629-035-0105 will adopt northwest and southwest Oregon State Forest Management Plans revised April 2010 as administrative rules, as required by OAR 629-035-0030(6)(a). Due to the voluminous nature of the forest management plans, the rule adopts these plans by reference. Copies of the revised forest management plans may be viewed on the Oregon Department of Forestry's website at: <http://egov.oregon.gov/ODF/>, or at the office of the State Forester, and are available upon request.

Rules Coordinator: Sabrina Perez—(503) 945-7210

629-035-0105

Adopted Forest Management Plan Documents

(1) The following forest management plan documents have been adopted and incorporated by reference into this division:

(a) Northwest Oregon State Forests Management Plan, Revised Plan, April 2010;

(b) Southwest Oregon State Forest Management Plan, Revised Plan, April 2010;

(2) The forest management plan documents which have been incorporated by reference into this division are maintained by the State Forester at the Oregon Department of Forestry's headquarters in Salem, Oregon.

Stat. Auth.: ORS 526.016(4) & 526.041

Stats Implemented: ORS 530.050

Hist: DOF 2-2001, f. & cert. ef. 1-19-01; DOF 2-2010, f. & cert. ef. 6-22-10

ADMINISTRATIVE RULES

Department of Geology and Mineral Industries Chapter 632

Rule Caption: Implement portions of SB 190 (2009), clarify definitions, and housekeeping.

Adm. Order No.: DGMI 1-2010

Filed with Sec. of State: 6-22-2010

Certified to be Effective: 6-22-10

Notice Publication Date: 3-1-2010

Rules Amended: 632-020-0005, 632-020-0010, 632-020-0015, 632-020-0020, 632-020-0030, 632-020-0031, 632-020-0040, 632-020-0045, 632-020-0055, 632-020-0060, 632-020-0065, 632-020-0070, 632-020-0090, 632-020-0095, 632-020-0100, 632-020-0105, 632-020-0110, 632-020-0115, 632-020-0117, 632-020-0120, 632-020-0125, 632-020-0130, 632-020-0135, 632-020-0138, 632-020-0145, 632-020-0150, 632-020-0151, 632-020-0154, 632-020-0155, 632-020-0156, 632-020-0157, 632-020-0158, 632-020-0170, 632-020-0175, 632-020-0180

Subject: This is the first phase of a two-phase rulemaking. Changes proposed at this time are intended to address amendments to ORS Chapter 522 made by 1009 Oregon Laws Chapter 794 (SB 190) and to correct typographical and grammatical errors in existing rule text. The second phase of rulemaking, not proposed at this time, will improve the text of rules, develop administrative enforcement tools, and clarify and improve unit management tools.

Rules Coordinator: Gary W. Lynch—(541) 967-2039, ext. 23

632-020-0005

Jurisdiction and Authority

(1) ORS chapter 522 authorizes the Department of Geology and Mineral Industries to control the drilling, re-drilling, and deepening of wells for the discovery and production of geothermal resources so that such wells will be constructed, operated, maintained, and abandoned in the manner necessary to safeguard the life, health, property, and welfare of the people of this state and to encourage the maximum economic recovery of geothermal resources therefrom. The Act also gives the department responsibility for regulating re-injection of geothermal fluids into underground reservoirs within prescribed limits of ORS 522.019(2) in a manner which will not be detrimental to beneficial use of waters of the state.

(2) The permittee shall, in addition to complying with ORS chapter 522 and these rules, comply with applicable laws and regulations of the Water Resources Department, Department of Environmental Quality, and any other agency having jurisdiction and control in the field of natural resources within the State of Oregon.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0010

Definitions

(1) "Abandonment" means the failure to properly plug and decommission a prospect or geothermal well in accordance with the rules in this division.

(2) "Artesian" means the response of water or fluid under natural pressure whereby it rises above the level where it was originally encountered.

(3) "Blow-Out" means an uncontrolled escape of fluids, such as from a drilling well when high formation pressure is encountered.

(4) "Board" means Governing Board of the State Department of Geology and Mineral Industries.

(5) "By-Products" means any mineral or minerals, exclusive of helium or oil, hydrocarbon gas, or other hydrocarbon substances that (i) are found in solution or in association with geothermal resources and have a value of less than 75 percent of the value of the geothermal resource or (ii) are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves.

(6) "Contamination" means any alteration of the physical, chemical, or biological properties of surface or groundwaters of the state; such alteration may not prevent the beneficial use of such waters.

(7) "Department" means the State Department of Geology and Mineral Industries.

(8) "Fresh Water" means water that is used, or could be used, for irrigation or domestic purposes.

(9) "Geothermal Area" means any parcel of land that is, or reasonably appears to be, underlain by Geothermal Resources.

(10) "Geothermal Injection Well" means any well or converted well constructed to dispose of geothermal fluids derived from geothermal resources into an underground reservoir.

(11) "Geothermal well" includes any well drilled to explore for or produce geothermal resources from any depth other than a prospect well as defined in section (18) and any geothermal injection well as defined in section (10) of this rule.

(12) "Observation Status" means that the department has authorized a geothermal well or prospect well to remain unplugged for a specified and extended period to allow the well to be used to collect information about subsurface conditions.

(13) "Operator" means the person:

(a) Who possesses the legal right to drill a geothermal well or prospect well, or

(b) Who has obtained a drilling permit pursuant to ORS 522.135, or

(c) Who possesses the legal right to operate a completed geothermal well as described by ORS 522.185.

(14) "Owner" means the person who has the right to drill geothermal wells or prospect wells, or to appropriate the production from a completed geothermal well, either for himself or for himself and others.

(15) "Permittee" means owner or operator.

(16) "Person" means any individual, corporation, company, association of individuals, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative; or a state, federal, or local agency that is the subject of legal rights and duties under these regulations.

(17) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or such radioactive or other substance into any waters of the state that either by itself or in connection with any other substance present, will or can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life, or the habitat thereof.

(18) "Prospect Well" means any well or hole drilled as a geophysical test well, seismic shot hole, mineral exploration drilling, core drilling, or temperature gradient test well, and drilled in prospecting for geothermal resources. "Prospect Well" does not include a geothermal well as defined in section (11) of this rule.

(19) "Reservoir" means an aquifer or combination of aquifers or zones containing a common geothermal or groundwater resource.

(20) "Royalty Interest" means a right or interest in geothermal resources produced from land or in the proceeds of the first sale of those resources.

(21) "State Geologist" means the director of the Department of Geology and Mineral Industries.

(22) "Unit Agreement" means an agreement or plan of development and operation under the provisions of ORS 308.370, 522.015, 522.405 to 522.545, 522.815, 522.990 and this division of OAR 632 for the production and/or use of geothermal resources in separately owned interests as a single consolidated unit that provides for the allocation of costs and benefits.

(23) "Unit Operator" means the person designated in the unit agreement to manage and conduct the unit agreement.

(24) "Waste" means any physical waste, deleterious effects on surface and groundwater, including but not limited to underground waste resulting from the inefficient, excessive, or improper use or dissipation of reservoir energy, or resulting from the location, spacing, drilling, equipping, operation, or production of a geothermal resource well or prospect well in such manner that reduces or tends to reduce the ultimate economic recovery of the geothermal resources within a reservoir; and surface waste resulting from the location, spacing, drilling, equipping, operation, or production of a geothermal resource well or prospect well in such a manner that causes or tends to cause the unnecessary or excessive surface loss or destruction of geothermal resources released from the reservoir.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

ADMINISTRATIVE RULES

632-020-0015

Inspection and Supervision

The department shall inspect and supervise geothermal operations for the purpose of enforcing compliance with the rules and orders promulgated by the board.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0020

General Rules

General rules apply statewide and to all lands within the jurisdiction of the State of Oregon unless otherwise provided or superseded by a special rule.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0030

Application and Permit to Drill, Redrill, Deepen, or Alter Casing

(1) Before commencing the drilling, redrilling, deepening, or altering of casing of any geothermal well or prospect well, the owner or operator of any geothermal well or prospect well must file with the department a written application for a permit to drill, redrill, deepen, or alter casing accompanied by a nonrefundable fee in accordance with ORS 522.055 or 522.155. The application must include, but is not limited to:

(a) The location(s) and ground elevation(s) of the proposed well(s). The location includes the township, range, and section, and the footage measurement from a section or quarter section corner. For prospect wells, a map may replace the footage measurements;

(b) An identifying name or number for each well, approved by the department;

(c) The proposed geologic objectives and proposed well depth for each well; and

(d) Other pertinent data as the department may require in a form acceptable to the department. The information on the permit application is not confidential, with the exception of prospect well locations.

(2) The department will circulate an application to drill pursuant to ORS 522.125(1) for geothermal wells or ORS 522.065 for prospect wells.

(3) Upon receipt of the application, the fee, the bond required under OAR 632-020-0035, and after the comment period provided for by ORS 522.125 for geothermal wells and 522.065 for prospect wells, the department will make a determination and issue a permit to drill, unless the drilling of the geothermal well or prospect well is contrary to law, rule, or order of the board. The drilling, redrilling, deepening, or altering of casing of a geothermal well or prospect well is prohibited until a permit is obtained. If the permit is disallowed, the department will immediately notify the person in writing giving the reasons.

(4) The issuance of a permit is not a finding of compliance with the Statewide Planning Goals (ORS 197.225) or compatibility with the acknowledged comprehensive plan. The applicant must receive land-use approval from the affected local government supported by written findings as provided in OAR 632-001-0015(5)(b)(A) before the use can commence.

(5) After completion, suspension, or decommissioning of any well, the provisions of this section also apply to the deepening, redrilling, or altering casing of the well.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 1-1984, f. & ef. 1-23-84; GMI 1-1991, f. 9-5-91, cert. ef. 9-6-91; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0031

Active Permits

The permittee of any geothermal well or prospect well permit under which a well has been drilled and not decommissioned, must provide an annual nonrefundable fee in accordance with ORS 522.115 for geothermal wells or ORS 522.055 for prospect wells on or before the anniversary of the issuance date of each active permit issued by the department. As a courtesy, the department may notify the permittee with a notice prior to the anniversary date.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
His.: GMI 1-1991, f. 9-5-91, cert. ef. 9-6-91; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0040

Assignment, Transfers of Ownership

The owner or operator of an existing and/or proposed geothermal or prospect well must notify the department in writing, in a form acceptable to the department, of the sale, assignment, transfer, conveyance, or exchange of such well and/or a change in the lessor of the land upon which such well is situated within five days thereof. Each notice shall contain the following:

(1) The name and address of the person to whom the well or mineral rights was sold, assigned, transferred, conveyed, or exchanged;

(2) The name and location of the well; and

(3) The date of sale, assignment, transfer, conveyance, or exchange.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0045

Notice of Change in Ownership

Every person who acquires the ownership or the right of operation of a well or proposed well as described by OAR 632-020-0040 must, within five days after acquiring such well or proposed well, notify the department in writing of the newly acquired ownership or right of operation. Each notice must contain the following:

(1) The name and address of the person from whom the well or proposed well was acquired,

(2) The name and location of the well, and

(3) The date of the acquisition.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0055

Proper Completion and Abandonment

(1) A geothermal well or prospect well is properly completed for the purposes of this chapter when it is demonstrated that the well is capable of production, flow testing, monitoring temperature, pressure or other subsurface conditions, injecting fluids, or other approved purpose, and the person engaged in drilling, redrilling, deepening, or altering casing of the well has shown to the satisfaction of the department that the manner of conducting these activities is satisfactory.

(2) A well is considered properly plugged and decommissioned, for the purpose of this chapter, when the conditions of ORS 522.005 to 522.990 and these rules are fulfilled and the person drilling, redrilling, deepening, or altering casing of such well has shown to the satisfaction of the State Geologist that all proper steps have been taken to protect groundwater and surface water from pollution resulting from the decommissioned well and to prevent the escape of all fluids to the surface.

(3) Proper completion and decommissioning requires adequate protection of the environment and of aesthetic qualities of the surface in the area of operation.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0060

Filing of Well Records, Confidentiality

(1) The operator of a geothermal well must keep copies of well records and related information as provided in ORS 522.355 and 522.365. In addition, the operator must:

(a) Record the amount, size, and weight of casing used; and the size, type and depths of perforations; and

(b) File with the department, within 60 days after completion, suspension, or decommissioning of a well, all logs, samples, history, surveys, and other required data.

(2) The operator of a prospect well must keep and provide the department with records including a log describing the type of rocks penetrated, depths of water-bearing formations, bottom hole temperature, and well location.

(3) Records filed with the department pursuant to ORS 522.365 and sections (1) and (2) above will not be disclosed to the public for four years from the date of completion, suspension, or abandonment of the well, whichever occurs first. After four years, the records shall be available for public inspection under the provisions of ORS 192.410 to 192.505. If an operator claims that any record continues to be exempt from disclosure as a trade secret under ORS 192.501, the operator must notify the department

ADMINISTRATIVE RULES

and explain the basis for its claim at least 30 days before the end of the four-year period.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 1-1984, f. & ef. 1-23-84; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0065

Sundry Applications and Reports

(1) A written application for a permit to do work or to change plans previously approved must be filed with the department unless otherwise directed, and must be approved by the department before work is begun. Approval or denial must be given within 15 days by the department. If, in case of emergency, an application is submitted orally or by email, and approval is obtained, the transaction must be confirmed in writing. A subsequent report of the work performed must also be filed with the department.

(2) Before the repairing or performance of work to permanently alter the casing of a well, an application setting forth in detail the proposed work must be filed with, and approved by, the department. A detailed report of the work accomplished and the methods employed, including all dates and the results of such work, must be filed within 60 days after completion of the work.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0070

Well Designations

Every person drilling any well for geothermal resources or operating, owning, or controlling or in possession of any well drilled for geothermal resources, must paint or stencil and post and keep posted in a conspicuous place near the well, the name of the person drilling, operating, owning, or controlling the well, the name of the lease, the number of the well, and the number of the permit for the well, together with the Section, Township, and Range.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0090

Noise Abatement

The lessee must minimize noise when conducting air drilling operations or when the well is allowed to produce while drilling or drilling is conducted. Welfare of the operating personnel and the public must not be affected as a consequence of the noise created by the expanding gases. The method and degree of noise abatement must be as approved by the department and must comply with the pertinent rules adopted by the Oregon Department of Environmental Quality.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0095

Casing Requirements

(1) The owner or operator of any geothermal well or prospect well must properly case the well with adequate grade casing and cement the casing where necessary to provide adequate anchor for blow-out preventers. Casing design must take into account stress imposed by the maximum expected temperature and the physical effects of produced fluids and gases on casing durability. Surface casing for any well with a proposed depth of more than 500 feet must be set at a depth of at least ten percent of the proposed total depth of the well, or at least 25 feet into consolidated, competent rock, whichever is deeper, unless otherwise approved by the department. In areas with no nearby drilling history, surface casing must be set to a minimum of 300 feet, unless otherwise approved by the department.

(2) The owner or operator of a geothermal or prospect well must shut out pollution from strata containing water used for irrigation or domestic purposes and from surface water used for these purposes. The operator of a geothermal or prospect well that penetrates a usable fresh water aquifer shall be required to set casing or tubing through this formation and cement such casing or tubing from bottom to top unless the department approves a different program.

(3) Casing and casing seals used for prospect wells, where the temperature of groundwater does not exceed 250°F, must comply with the gen-

eral standards for the construction and maintenance of water wells set by the State Water Resources Department.

(4) Each fluid-bearing zone above the producing horizon in a geothermal resources well must be cased and sealed off to prevent the migration of formation fluids to other areas. Such casing and sealing off must be completed and tested the methods and means prescribed by the department.

(5) Cements used in cementing casing and sealing formations must be of a grade and type best suited for expected reservoir temperature, formation water chemistry and bonding properties. Cements acceptable for use in high-temperature holes include Modified Type A or G, Alumina Silica Flour, Phosphate Bonded Glass, or other equivalent high-temperature design cement.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0100

Removal of Casings

No person shall remove a casing, or any part of a casing, from any geothermal well or prospect well without applying in advance and obtaining approval in writing from the department.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0105

Directional Drilling

(1) The maximum point at which a well penetrates the producing formation must not vary from the vertical drawn from the center of the hole at the surface by more than 5 degrees. Deviation is permitted without special permission for short distances to straighten the hole, sidetrack junk, or to correct other mechanical difficulties.

(2) Except for the purposes of straightening the hole, sidetracking junk, or correcting mechanical difficulties as provided in this rule, no well shall be intentionally deviated from the vertical unless the operator first files an application and obtains a permit from the department. If drilling is in progress, the operator must notify the department immediately of the deviation of the hole or of the intention to deviate the hole. When an operator follows this procedure, an application must be filed as soon as possible.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0110

Serving Orders

When the department gives any written direction concerning the drilling, testing, or other operations conducted with respect to any geothermal well or prospect well drilled, in the process of being drilled, redrilled, deepened, altered, or in the process of being decommissioned, and the operator, owner, or designated agent of either, serves written notice, either personally or by mail, addressed to the department, requesting that a definite order be made upon such subject, the department shall, within a reasonable time after receipt of the notice, deliver a final written order on the subject matter. Any such final written order of the department may be appealed to the board and further redress may be sought in the manner provided in ORS Chapter 183 for appeals from final orders in contested cases.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0115

Measurement of Geothermal Resources

The lessee must measure or gauge all production from each well in accordance with methods approved by the department or may arrange with the department for other acceptable methods of measuring and recording production. The quantity and quality of all production shall be determined in accordance with the standard practices, procedures, and specifications generally used in the industry. For wells on federal land, the department will establish acceptable methods in concert with the Federal Authorized Officer.

Stat. Auth.: ORS 522
Stats. Implemented: ORS 522.305
Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

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632-020-0117

Spacing Plan

The Board may, on its own motion, or at the request of any interested party, hold a hearing to determine the maximum efficient rate at which any geothermal well in the state can produce a geothermal resource without waste. After the hearing, the Board may set production rates by order.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0120

Production Reports

The owner or operator of any well producing geothermal resources must file with the department, before the 20th day of each month, a statement of the geothermal resources production from the well during the preceding calendar month. The report must be in a form acceptable to the department.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0125

Abandonment

(1) Before beginning any operation to plug and decommission any prospect or geothermal well, the owner or operator must apply to the department for approval to decommission the well on a form acceptable to the department. An application for decommissioning a well must include a proposed decommission plan that describes the well and the proposed method of plugging the well and restoring the well site and the fee required under ORS 522.115.

(a) The department will review the decommissioning plan to determine whether it is adequate to protect land, water, and geothermal resources.

(b) If the department determines the plan is adequate, it will approve the plan and notify the applicant. If the department determines the plan is inadequate, it may order the plan to be revised to include whatever additional provisions are needed to protect land, water, and geothermal resources.

(c) The owner or operator must notify the department at least 24 hours before the proposed date for the commencement of decommissioning operations. Notification may be made by phone, but must be followed by written application. A representative of the department may be present during any decommissioning.

(d) The owner or operator of such well shall furnish the department with a written report of the decommissioning as provided in ORS 522.225(2).

(2) Geothermal resource, environment, and water resources to be protected:

(a) Before any prospect or geothermal well or any producing horizon encountered therein is decommissioned, the owner or operator must use such means, methods, and procedures as may be necessary to prevent water from entering any geothermal resources bearing formation, and to protect any underground or surface water.

(b) Prior to approving the decommissioning of any prospect or geothermal well, the department shall determine that the site has been restored to as near its original state as possible.

(3) Observation status. Suspension, Unlawful Abandonment, Removal of Equipment:

(a) At the time of permit issuance, the department may grant provisional observation status to prospect or geothermal wells if the wells are designed to be constructed and maintained as information gathering wells for an extended period. After drilling activities for such a well is completed, the board may grant observation status for a stated period.

(b) The board may authorize a permittee to suspend operations or remove equipment from a well for the period stated in the Board's written authorization, given upon written application of the permittee and his or its affidavit showing good cause. The period of suspension may be extended by the board, upon written application made before expiration of the previously authorized suspension, accompanied by affidavit of the permittee showing good cause for granting of such extension.

(c) After operations on or at a well have been suspended with the approval of the board pursuant to subsection (a) of this section, if operations are not resumed within six months from the date specified in such approval of suspension, an intention to abandon and unlawful abandonment shall be presumed unless the permittee has obtained from the Board an

extension of time of such suspension, upon his or its written application and affidavit showing good cause for the granting of such extension.

(d) Whenever operations on or at any well have been suspended for a period of six months without compliance with these regulations, the well will be presumed unlawfully abandoned.

(e) A well will be deemed unlawfully abandoned if, without notice given to the board as required by these rules, any drilling or producing equipment is removed.

(f) If the department determines that a prospect or geothermal well as been abandoned in violation of ORS chapter 522 or these rules, the department shall notify the board or notify or attempt to notify the permittee and before making a claim against the permittee's surety.

(g) All decommissioned wells must be plugged as provided in section (4) of this rule unless an alternative plugging is specifically approved by the department.

(4) Plugging Methods and Procedure, Geothermal Wells or Prospect Wells 2,000 Feet or More in Depth:

(a) The well must be filled with mud-laden fluid from bottom to top consisting of mud weighing 9.0 pounds per gallon of not less than 36 viscosity (API Full Funnel Method), with the exception of intervals required to be plugged with cement. Other fluids may be used upon approval of the department.

(b) At the top of each producing formation, or fluid zone at greater than hydrostatic pressure, a cement plug must be placed which extends either from the bottom of the well or from a point 50 feet below the top of each such producing formation or zone to a point at least 50 feet above each producing formation or zone.

(c) If a well is uncased through a freshwater zone, a cement plug must extend from 50 feet below the bottom of the water-bearing zone to at least 50 feet above the water zone.

(d) If the surface string of casing is set below the deepest freshwater-bearing formation, and the well is uncased below this point, a cement plug must be placed in the well extending from a point at least 50 feet below the base of the surface casing and 50 feet into the bottom of the casing.

(e) The top of all casing strings must be cut off at least 4 feet below ground surface, and casing and all annuli must be plugged with cement to a depth of at least ten feet.

(f) The operator has the option as to the method of placing cement in the well:

(A) Pumping through tubing; or

(B) Pump and plug displacement; or

(C) Other method approved by the department.

(5) Plugging Methods and Procedure, Prospect Wells Less than 2,000 Feet in Depth. Before decommissioning any prospect well less than 2,000 feet deep, that penetrates a usable fresh-water horizon, it is the duty of the owner or operator to plug the well in such a manner as to protect all freshwater-bearing formations. Within 60 days after plugging, the permittee must file an affidavit with the department, setting forth the location of the prospect well and the method used to protect water-bearing formations, if any were penetrated. Plugging consists of the following procedures unless a different method is approved by the department. These procedures may be done in open hole if the well is being decommissioned, or in the annulus around the tubing if the well is being completed as a temperature gradient well:

(a) In wells where water is not encountered, the hole is to be filled with heavy mud-laden fluid or with drill cuttings and a 10-foot cement plug placed at the top of the hole, buried at least two feet in such a manner as not to interfere with soil cultivation.

(b) In wells where groundwater is encountered, but is not under artesian pressure, the hole must be filled with cement to a point at least 50 feet above the water zone, or if the top of the zone is less than 50 feet from the ground surface, the cement must extend to the ground surface. If a well penetrates below a freshwater zone, a cement plug must extend from 50 feet below the bottom of the zone to at least 50 feet above the zone.

(c) In wells where artesian water is encountered, the well must be plugged with cement from bottom to top.

(6) Report on Completion. Within 45 days after the completion of the plugging and decommissioning of a geothermal well or prospect well, the owner or operator must file a report with the department setting forth in detail the method used in plugging the well or wells. The report must be in a form acceptable to the department.

(7) Wells Used for Fresh Water:

(a) When the well to be decommissioned may safely be used as a freshwater well and this use is desired by the land owner, the well need not be filled above the required sealing plug set below fresh water provided

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authorization for use of any such well is obtained from the Water Resources Department;

(b) Application for leaving the well partially unplugged as a fresh water well must be made to the department by the land owner, accompanied by his affidavit as to his need of water and the intended use of the well, together with a copy of the Water Resources Department's order or permit authorizing such use; and

(c) The operator must leave the fresh water well in a condition approved by the department.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.175 & 522.305

Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0130

Subsequent Abandonment Report

(1) Within 45 days after the decommissioning of a well, the owner or operator must make a report in a form acceptable to the department, of all work done with respect to the abandonment.

(2) Failure to decommission in accordance with the approved decommission plan, failure to submit to the department any application or report required by these rules, or failure to furnish the department, upon request, with any information regarding the condition of a well, constitutes sufficient grounds for disapproval of the decommissioning.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.175 & 522.305

Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0135

Well Spacing

The board shall approve proposed well-spacing programs for geothermal wells in a field or prescribe such modifications to the programs as it determines necessary for proper development. The board may do this by rule or order. In determining well spacing, the board shall consider such factors as:

- (1) Topographic characteristics of the area;
- (2) Hydrologic and geologic conditions in the reservoir;
- (3) Minimum number of wells required for adequate development;

and

- (4) Protection of the environment.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0138

Unit Agreements

(1) When voluntary unitization occurs under ORS 522.405 to 522.545, the operator of the unit must pay a fee to the department for the administration of the unit. The amount of the fee will be determined by the board on a case-by-case basis. The unit operator shall collect equitable shares of this fee from all persons, or state or local governing bodies, special districts, or agencies with a royalty interest in the unitized development.

(2) When the board requires the development of a unit agreement under ORS 522.405 to 522.545, the operator of the unit must pay a fee to the department for the creation and administration of the unit. The amount of the fee will be determined by the board on a case-by-case basis, for creation and administration of the unit. The unit operator shall collect equitable shares of this fee from all persons, or state or local governing bodies, special districts, or agencies with a royalty interest in the unitized development.

(3) The State Geologist shall review voluntary unit agreements governing production of geothermal resources to ensure compliance with the provisions of ORS 522.405 to 522.545.

(4) The operator or person proposing a board-initiated unit agreement shall make application to the board.

(5) The State Geologist shall enforce, when necessary, board-approved or initiated unit agreements.

(6) The board may change or approve proposed changes in the boundaries of a unit area upon application by the unit operator or interested person. Such changes shall not jeopardize pre-existing contractual relationships between participating parties.

(7) The board may levy fees upon any operator, person, state or local governing body, special district, or agency that holds a royalty interest in a unit area to cover reasonable costs associated with the development and administration of a unit agreement. If such a fee is not paid when due, the

board may require the fee to be paid from proceeds of the sale of the unit production.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305 & 522.405

Hist.: GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0145

Pits or Sumps

(1) Materials and fluids necessary for the drilling, production, or other operations by the permittee may be discharged or placed in pits and sumps only with the approval of the department and the Department of Environmental Quality. The operator must provide pits and sumps of adequate capacity and design to retain all materials. In no event shall the contents of a pit or sump be allowed to:

(a) Contaminate streams, artificial canals or waterways, groundwater, lakes, or rivers;

(b) Adversely affect the environment, persons, plants, fish, and wildlife and their populations; or

(c) Damage the aesthetic values of the property or adjacent properties.

(2) When no longer needed, pits and sumps are to be filled and covered and the premises restored to a near natural state.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0150

Disposal of Solid and Liquid Wastes

Injection of geothermal fluids shall not pollute waters of the state, create a public nuisance, impair beneficial uses of waters, or degrade the biologic habitat of aquatic life and domestic and wild animals. Permits for prospect and geothermal wells will be issued in accordance with ORS 522.019, 522.025, and 522.135. The department will coordinate with the Department of Environmental Quality and the Department of Water Resources to ensure that permit conditions are consistent and protective of natural resources and the environment.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0151

Handling of Test Fluids

Prior to conducting formation and production tests, the operator must provide adequate storage for anticipated volumes of formation fluids and drilling mud. Arrangements for ultimate disposal of waste fluids must be made with the department and the Department of Environmental Quality.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4-1980, f. & ef. 10-2-80; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0154

Injection and Conservation

Injection is the preferred method for handling geothermal fluids derived from geothermal resources to conserve natural heat energy and to maintain reservoir temperature and pressure. This rule applies to fluids derived from geothermal wells as defined in ORS 522.005(12) that are subject to departmental regulation under ORS 522.025.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0155

Application to Drill Injection Well

(1) The provisions of this rule apply to applications for geothermal wells intended for the injection of geothermal fluids, and are in addition to the requirements of OAR 632.030.

(2) An application for a permit to inject geothermal fluid into any underground reservoir must include, but is not limited to, the following:

(a) A plan of injection explaining the proposed system including facilities other than the injection well necessary to conduct the operations;

(b) A map of adequate scale (preferably 1:24,000, but not less than 1:62,500 or 1" = 1 mile) to show all existing and proposed wells, pipelines, and other surface facilities. All wells must be distinguished by type;

(c) The injection fluid characteristics such as quality, quantity, source, chemical analysis, chemical reactivity, toxicity, temperature, etc.;

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(d) The characteristics of the proposed injection zone including: volume capacity of the zone, geologic formation and structure, porosity, permeability, chemical analysis of zonal water, static formation pressures and temperatures, anticipated zonal fluid reactivity to the injected fluids, any previous history of injection operations into the same or similar formations, any injectivity tests which may have been conducted, and other pertinent data;

(e) Hydrology of the surrounding area, including groundwater quality, quantities, and analyses, and the predicted effects of contamination by injected fluids on the existing surface and groundwater;

(f) Subsurface maps and cross sections of the producing and injecting zone structure and lithology and any available logs or histories of a well or other wells penetrating the injection zone that have not been previously submitted. Discuss the effects of injection on such factors as potable water, seismicity, and local tectonic conditions;

(g) Representative injection well drilling program;

(h) Proposed downhole and surface injection equipment and metering facilities with capacity, design capabilities, and design safety factors in sufficient detail to enable adequate environmental analysis. Construction and engineering design plans should be included; and

(i) Proposed injectivity surveys and other means to monitor injection performance.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.019 & 522.305

Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0156

Permit for Injection

(1) The department may issue the permit after finding that issuance thereof is consistent with the purposes set forth in ORS 468A.010, 468B.015, 468B.030, 537.525, and ORS 522.

(2) Appropriate approval must be obtained from the Department of Environmental Quality before re-injection is commenced. Issuance of a geothermal well permit allowing for reinjection does not relieve any person from any obligation to register or to obtain a permit under ORS 468B.050 or ORS 468B.195 to 468B.197 (Department of Environmental Quality).

(3) The department shall not issue a permit for injection of geothermal fluids until the operator has posted a bond in compliance with OAR 632-020-0035.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0157

Construction of Injection Wells

(1) Injection wells must be constructed in compliance with the standards required in OAR 632-020-0095 and 632-020-0125.

(2) Special standards may be required by the department to allow for corrosive effects of injected fluids, precipitation of dissolved minerals, more extensive cementing of casings, specifications for tubing packers and casing packers, or other construction practices generally accepted by the industry.

(3) All wells for injection of produced fluids must be tested for mechanical integrity at least once every five years to determine that there is no leak in the casing and that there is no fluid movement into an underground source of water other than that from which the fluid was produced, unless otherwise approved by the department. Acceptable tests include pressure build-up profiles, pressure testing, and casing thickness logs to demonstrate integrity of the casing. The department may, on a case-by-case basis, approve tracer surveys, noise logs, temperature logs, spinner surveys, or other methods to detect water movement adjacent to the wellbore. The department must be notified to witness mechanical integrity tests, and the results must be submitted as required by OAR 632-020-0060.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0158

Wellhead Equipment, Injection Wells

Adequate wellhead equipment must be installed to control expected pressures. Where underground conditions are unknown, the same equipment must be used as required for exploration holes.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0170

Environmental Protection

The permittee shall conduct operations under this chapter so as not to pollute land, water or air, pollute streams, damage the surface or pollute the underground water. The operator must comply with federal and state air and water quality standards. Plans for disposal of well effluents must take into account the effect on groundwater, streams, plants, fish and wildlife and their populations, atmosphere, or any other effects that may cause or contribute to pollution. Plans must be approved by the department before action is taken under them.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.305

Hist.: GMI 4, f. 7-20-72, ef. 8-1-72; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0175

Blowout Prevention for Geothermal Wells and Prospect Wells 2,000 Feet or More in Depth

(1) Cementing of Casing. The conductor and surface casing strings must be cemented with a quantity of cement sufficient to fill the annular space back to the surface. The intermediate casing string must be cemented to fill the annular space back to the surface unless otherwise approved by the department. Production casing must be cemented with a high temperature resistant cement, unless waived by the department and must be cemented in a manner necessary to exclude, isolate, or segregate overlying formation fluids from the geothermal resources zone and to prevent the movement of fluids into possible fresh water zones. Production casing must be cemented back to the surface or, if lapped, to the top of the lap. A temperature or cement bond log may be required by the department after setting and cementing the production casing and after all primary cementing operations if an unsatisfactory cementing job is indicated. Proposed well cementing techniques differing from the requirements of this paragraph will be considered by the department on an individual well basis.

(2) Pressure Testing:

(a) Prior to drilling out the casing shoe after cementing, all surface casing strings must be pressure tested to a minimum pressure of 1,000 psi, or 1.5 psi per foot of casing, or to the working pressure of the casing, whichever is less. A higher test pressure may be specified in permit stipulations for casing strings set to greater than 1,000 feet. Exceptions to these minimum pressures may be allowed with the specific prior permission of the department. Such test must not exceed the rated working pressure of the casing or the blowout preventer stack assembly, whichever is lesser.

(b) In the event of casing failure during the test, the casing must be repaired or recemented until a satisfactory test is obtained. A pressure decline of 10 percent or less in 30 minutes is considered satisfactory. The department may require an affidavit signed by the operator or contractor conducting the pressure test certifying that a satisfactory pressure test has been obtained.

(c) Casing test results must be recorded in the driller's log and reported to the department within 60 days after completion. The casing and lap test reports must give a detailed description of the test including mud and cement volumes, lapse of time between running and cementing casing and testing, method of testing, and test results.

(3) Blowout Prevention Equipment and Procedures. All necessary precautions must keep all wells under control at all times, utilize trained and competent personnel, and utilize properly maintained equipment and materials. Blow-out preventers and related well control equipment must be installed, tested immediately after installation using water, and maintained ready for use until drilling operations are completed. Certain components, such as packing elements and ram rubbers, must be of high-temperature resistant material as necessary. All kill lines, blowdown lines, manifolds, and fittings must be steel and have a temperature derated minimum working pressure rating equivalent to the maximum anticipated wellhead surface pressure. Subject to subsections (a) and (b) of this section, blowout prevention equipment must have hydraulic actuating systems and accumulators of sufficient capacity to close all of the hydraulically operated equipment and have a minimum pressure of 1,000 psi remaining on the accumulator. The department may approve manually operated blow-out preventers. Dual control stations must be installed with a high-pressure backup system. One control panel must be located on the ground at least 50 feet away from the wellhead or rotary table. Air or other gaseous fluid drilling systems must have blow-out prevention assemblies. Such assemblies may include, but are not limited to, a rotating head, a double ram blow-out preventer or equivalent, a banjo-box or an approved substitute therefor and a blind ram blow-out preventer or gate valve, below the banjo-box. Exceptions to the requirements of this paragraph will be considered by the department only for

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certain geologic and well conditions such as stable surface areas with known low subsurface formation pressures and temperatures:

(a) Conductor Casing. In certain instances a remotely controlled hydraulically operated expansion type preventer or an acceptable alternative, approved by the department, including a drilling spool with side outlets or equivalent may be required by the department in areas where shallow thermal zones are indicated.

(b) Surface, Intermediate, and Production Casing. Before drilling below any of these strings, the blowout prevention equipment shall include a minimum of the following, unless otherwise approved by the department:

(A) One expansion-type preventer and accumulator or rotating head;

(B) A manual and remotely controlled hydraulically operated double ram blowout preventer or equivalent having a temperature derated minimum working pressure rating that exceeds the maximum anticipated surface pressure at the anticipated reservoir fluid temperature;

(C) A drilling spool with side outlets or equivalent;

(D) A kill line equipped with at least one valve; and

(E) A blowdown line equipped with at least two valves and securely anchored at all bends and at the end. At least one valve must be adjustable and one must be a complete shut off.

(c) Testing and Maintenance:

(A) Ram type blowout preventers and auxiliary equipment must be tested to a minimum of 1,000 psi, 1.5 psi per foot of casing, or to the working pressure of the casing or assembly, whichever is the lesser. Expansion type blowout preventers must be tested to 70 percent of the above pressure testing requirements. The blowout prevention equipment must be pressure tested:

(i) When installed;

(ii) Prior to drilling out plugs and/or casing shoes; and

(iii) Following repairs that require disconnecting a pressure seal in the assembly.

(B) During drilling operations, blowout prevention equipment must be actuated to test proper functioning as follows: once each trip for blind and pipe rams but not less than once each day for pipe rams; and at least once each week on the drill pipe for expansion type preventers.

(C) All flange bolts must be inspected at least weekly and retightened as necessary during drilling operations. The auxiliary control systems must be inspected daily to check the mechanical condition and effectiveness and to insure personnel's acquaintance with the method of operation. Blowout prevention and auxiliary control equipment must be cleaned, inspected, and repaired, if necessary, prior to installation to assure proper functioning. Blowout prevention controls must be plainly labeled, and all crew members must be instructed on the function and operation of the equipment. A blowout prevention drill must be conducted weekly for each drilling crew. All blow-out prevention tests and crew drills must be recorded on the driller's log.

(4) Related Well Control Equipment. A full opening drill string safety valve in the open position must be maintained on the rig floor at all times while drilling operations are being conducted. A kelly cock must be installed between the kelly and the swivel.

(5) Drilling Fluid. The properties, use, and testing of drilling fluids and the conduct of related drilling procedures shall be such as are necessary to prevent the blow-out of any well. Sufficient drilling fluid materials to ensure well control must be maintained in the field area readily accessible for use at all times.

(6) Drilling Fluid Control. Before pulling drill pipe, the drilling fluid must be properly conditioned or displaced. The hole shall be kept reasonably full at all times; however, in no event shall the annular mud level be deeper than 100 feet from the rotary table when coming out of the hole with drill pipe. Mud cooling techniques shall be utilized when necessary to maintain mud characteristics for proper well control and hole conditioning. The department may require the use of mud cooling equipment.

(7) Drilling Fluid Testing:

(a) Mud testing and treatment consistent with good operating practice must be performed daily or more frequently as conditions warrant. Mud testing equipment must be maintained on the drilling rig at all times;

(b) The following drilling fluid system monitoring or recording devices must be installed and operated continuously during drilling operations, with mud, occurring below the shoe of the conductor casing. No exceptions to these requirements will be allowed without the specific prior approval of the department:

(A) High-low level mud pit indicator including a visual and audio-warning device;

(B) Degassers, desilters, and desanders;

(C) A mechanical, electrical, or manual surface drilling fluid temperature monitoring device. The temperature of the drilling fluid going into and coming out of the hole must be monitored, read, and recorded on the driller's or mud log for a minimum of every 30 feet of hole drilled below the conductor casing; and

(D) A hydrogen sulfide indicator and alarm must be installed in areas suspected or known to contain hydrogen sulfide gas that may reach levels considered dangerous to the health and safety of personnel in the area.

(8) Well-head Equipment and Testing:

(a) Completions. All wellhead connections must be fluid pressure tested to the API or ASA working pressure rating. Cold water is required as the testing fluid, unless otherwise approved by the department at the time of permitting. Welding of wellhead connections must be performed by a certified welder using materials in conformance with ASTM specifications;

(b) Well-head Equipment. All completed wells must be equipped with a minimum of one casinghead with side outlets, one master valve, and one production valve, unless otherwise approved by the department. All casing-heads, Christmas trees, fittings, and connections must have a temperature derated working pressure equal to or greater than the surface shut-in pressure of the well at reservoir temperature. Packing, sealing mediums, and lubricants must consist of materials or substances that function effectively at, and are resistant to, high temperatures. Wellhead equipment, valves, flanges, and fittings must meet minimum ASA standards or minimum API Standard 6A specifications. Casinghead connections must be made such that fluid can be pumped between casing strings.

(9) Supervision. From the time drilling operations are initiated and until the well is completed or decommissioned, a member of the drilling crew or the toolpusher must monitor the rig floor at all times for surveillance purposes, unless the well is secured with blowout preventers or cement plugs.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.155 & 522.305

Hist.: GMI 8, f. & ef. 11-17-76; GMI 4-1980, f. & ef. 10-2-80; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 2-1999, f. & cert. ef. 8-30-99; DGMI 1-2010, f. & cert. ef. 6-22-10

632-020-0180

Blowout Prevention Rules for Prospect Wells

All prospect wells drilled below a depth of 500 feet must have adequate casing and wellhead controls installed, unless otherwise approved by the department. The casing must extend from the surface to at least ten percent of the proposed total depth of the well and be cemented back to the surface. Wellhead controls must consist of an annular preventer or double ram preventer or pipe rams and gate valve. Controls may be manual or hydraulic.

(1) If hot water or flowing steam at 65° C. (150° F.) or greater is encountered, further drilling must stop immediately, the operator must notify the department, and the hole will be either:

(a) Completed as an observation hole using steel tubing cemented from total depth to surface; or

(b) Abandoned by plugging with cement from total depth to surface; or

(c) Deepened only after a review of the adequacy of wellhead control equipment and approval from the department. If the prospect well is deepened as described in this section, it must be completed as described in subsections (a) and (b) of this section.

(2) If cold flowing artesian water is encountered, the hole will be completed as in subsection (1)(a) or (b) of this rule, except that plastic tubing may be used.

(3) Locations proposed in natural thermal areas within a 1,000 foot radius of hot springs, fumaroles, or other surface geothermal indicators, or in areas of known artesian water flow, will require a detailed drilling program for each hole approved by the department. The department may require special drilling and completion techniques (such as cemented surface casing and simple expansion type blowout preventers) to safely control formations containing geothermal or other resources that may be penetrated.

(4) A supply of mud and lost circulation material must be kept on hand while drilling to control abnormal pressure if rotary equipment is used.

Stat. Auth.: ORS 522

Stats. Implemented: ORS 522.155 & 522.305

Hist.: GMI 8, f. & ef. 11-17-76; GMI 4-1980, f. & ef. 10-2-80; GMI 1-1983, f. & ef. 9-30-83; GMI 2-1995, f. & cert. ef. 3-10-95; DGMI 1-2010, f. & cert. ef. 6-22-10

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Department of Human Services, Addictions and Mental Health Division: Addiction Services Chapter 415

Rule Caption: Establish the “Health Professionals Program” as required by HB 2345 (Enrolled 2009 Session).

Adm. Order No.: ADS 3-2010

Filed with Sec. of State: 7-1-2010

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Rules Adopted: 415-065-0005, 415-065-0010, 415-065-0015, 415-065-0020, 415-065-0025, 415-065-0030, 415-065-0035, 415-065-0040, 415-065-0045, 415-065-0050, 415-065-0055, 415-065-0060, 415-065-0065, 415-065-0070

Subject: The Addictions and Mental Health (AMH) Division is adopting these new rules in order to establish a “Health Professionals Program” as required by HB 2345 (Enrolled, 2009 Session). The title of the new rule division is the “Health Professionals’ Service Program.”

Rules Coordinator: Richard Luthe—(503) 947-1186

415-065-0005

Purpose, Intent and Scope

The purpose of these rules is to establish a consolidated, statewide health professionals’ monitoring program for licensees of participating health licensing boards, as required by ORS 676.190, who are unable to practice with professional skill and safety due to substance use disorders, mental health disorders, or both types of disorders. The program shall provide non-treatment compliance monitoring and reporting services.

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0010

Definitions

The following terms mean:

(1) “Admitted to the hospital for mental illness” for purposes of ORS 676.190 means admitted to the hospital for treatment of a mental health disorder that gives rise to concerns about the licensee’s ability or willingness to participate in the program. Admission for evaluation or diagnosis does not constitute being admitted to the hospital for mental illness.

(2) “Assessment or evaluation” means the process an independent third-party evaluator uses to diagnose the licensee and to recommend treatment options for the licensee.

(3) “Board” means a health professional regulatory board as defined in ORS 676.160 or the Oregon Health Licensing Agency for a board, council or program listed in 676.606.

(4) “Business day” means Monday through Friday, 8:00 a.m. to 5:00 p.m. Pacific Time, except legal holidays as defined in ORS 187.010 or 187.020.

(5) “Diagnosis” means the principal mental health or substance use diagnosis listed in the DSM. The diagnosis is determined through the assessment and any examinations, tests or consultations suggested by the assessment and is the medically appropriate reason for services.

(6) “Division” means the Department of Human Services, Addictions and Mental Health Division.

(7) “DSM” means the *Diagnostic and Statistical Manual of Mental Disorders-IV-R*, published by the American Psychiatric Association.

(8) “Family” means any natural, formal, or informal support persons identified as important by the licensee.

(9) “Federal regulations” means:

(a) As used in ORS 676.190(1)(f)(D), a “positive toxicology test result as determined by federal regulations pertaining to drug testing” means test results meet or exceed the cutoff concentrations shown in 49 CFR § 40.87 (2009) for the substances listed there.

(b) As used in ORS 676.190(4)(i), requiring a “licensee to submit to random drug or alcohol testing in accordance with federal regulations” means licensees are selected for random testing by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with licensees’ unique identification numbers or other comparable identifying numbers. Under the selection process used, each covered licensee shall have an equal chance of being tested each time selections are made, as described in 49 CFR § 199.105(c)(5)(2009). Random drug tests must be unannounced and the dates for administering

random tests must be spread reasonably throughout the calendar year, as described in 49 CFR § 199.105(c)(7)(2009).

(10) “Fitness to practice evaluation” means the process a qualified, independent third-party evaluator uses to determine if the licensee can safely perform the essential functions of the licensee’s health practice.

(11) “Independent third-party evaluator” means an individual who is approved by a licensee’s board to evaluate, diagnose, and offer treatment options for substance use disorders, mental health disorders, or co-occurring disorders.

(12) “Individual service record” means the official permanent program documentation, written or electronic, for each licensee, which contains all information required by these rules and maintained by the program to demonstrate compliance with these rules

(13) “Licensee” means a health professional who is licensed or certified by or registered with a board and the professional is receiving services in the program under these rules.

(14) “Mental health disorder” means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom that is identified in the DSM. “Mental health disorder” includes gambling disorders.

(15) “Monitoring agreement” means an individualized agreement between a licensee and the vendor that meets the requirements for a diversion agreement set by ORS 676.190.

(16) “Monitoring Entity” means an independent third-party that monitors licensees’ program enrollment status and monitoring agreement compliance.

(17) “Non-treatment compliance monitoring” means the non-medical, non-therapeutic services employed by the vendor to track and report the licensee’s compliance with the monitoring agreement.

(18) “Peer” means another licensee currently enrolled in the program.

(19) “Provisional enrollment” means temporary enrollment, pending verification that a self-referred licensee meets all program eligibility criteria.

(20) “Self-referred licensee” means a licensee who seeks to participate in the program without a referral from the board.

(21) “Substance Use Disorders” means disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder and other disorders, as defined in DSM criteria.

(22) “Substantial non-compliance” means that a licensee is in violation of the terms of his or her monitoring agreement in a way that gives rise to concerns about the licensee’s ability or willingness to participate in the program. Substantial non-compliance and non-compliance include, but are not limited to, the factors listed in ORS 676.190(1)(f). Conduct that occurred before a licensee entered into a monitoring agreement does not violate the terms of that monitoring agreement.

(23) “Successful completion” means that for the period of service deemed necessary by the vendor or by the licensee’s board by rule, the licensee has complied with the licensee’s monitoring agreement to the satisfaction of the program, and has met the terms of the fee agreement between the program and the licensee.

(24) “Toxicology testing” means urine testing or alternative chemical monitoring including but not limited to blood, saliva, or breath.

(25) “Treatment” means the planned, specific, individualized health and behavioral-health procedures, activities, services and supports that a treatment provider uses to remediate symptoms of a substance use disorder, mental health disorder or both types of disorders.

(26) “Vendor” means the entity that has contracted with the Division to conduct the program.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0015

Clinical Council

(1) The Division, in collaboration with the boards, shall establish a Clinical Council that provides clinical guidance and advice to the vendor, in light of evidenced-based research and data about substance use disorders, mental health disorders or both types of disorders.

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(2) The Clinical Council shall consist of eight members. The Division shall appoint one member and the boards, in consultation with the Division, shall appoint seven members.

(3) The Clinical Council shall select a chairperson from among its members.

(4) To be eligible for appointment to the Clinical Council, an individual must be a resident of Oregon and must have expertise in the recognition, intervention, assessment and treatment of persons who have a substance use disorders, mental health disorders or both types of disorders.

(5) In recruiting and selecting members for the Clinical Council, the Division and the boards shall seek members who have expertise with a range of culturally appropriate treatment options for people with substance use disorders, mental health disorders or both types of disorders.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0020

Audits

(1) The Division shall arrange for an independent third-party to audit the program and the monitoring entity to ensure compliance with the program guidelines.

(2) The Division shall report the results of the audit to the Legislative Assembly, the Governor, and the boards.

(3) The Division's report may not contain individually identifiable information about the licensees.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0025

Record Maintenance and Disposition

(1) If the vendor discontinues operations, the vendor shall transfer the individual service records and the program service records to the Division.

(2) The Division shall identify a records administrator, who is responsible for:

(a) Assuring compliance with 42 CFR §2.19 and other applicable state and federal regulations;

(b) Keeping the transferred individual service records consistent with the applicable records retention schedule; and

(c) With a licensee's written consent, transferring individual service records to another vendor.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0030

Administration Fee

(1) Each board that participates in the program shall pay the Division a fee for participating in the program.

(2) The Division shall calculate the total fee based on all the vendor costs and administration expenses, including but not limited to, Division personnel costs and ancillary expenses, and fees paid to the vendor, the monitoring entity, and the auditor.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0035

Board Referrals

(1) A board that refers a licensee to the program must make the referral in writing. The referral must include:

(a) A copy of a report from an independent third-party evaluator who diagnosed the licensee with a substance use disorder, a mental health disorder or both types of disorder, stating the diagnosis and the applicable diagnostic code from the DSM;

(b) The treatment options developed by the independent third-party evaluator;

(c) A statement that the board has investigated the licensee's professional practice and has determined whether the licensee's professional practice, while impaired, presents or has presented a danger to the public;

(d) A description of any restrictions imposed by the board or recommended by the board on the licensee's professional practice;

(e) A statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the board within three business days after the licensee is arrested or convicted; and

(f) A written statement from the licensee agreeing to enter the program and agreeing to abide by all terms and conditions established by the vendor.

(2) A board-referred licensee is enrolled in the program effective on the date the licensee signs the consents and the monitoring agreement required by ORS 676.190.

(3) Upon the licensee's enrollment in the program, the vendor shall send to the monitoring entity a copy of the licensee's monitoring agreement and the consents required by ORS 676.190.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0040

Self-Referrals

(1) Provisional Enrollment. To be provisionally enrolled in the program, a self-referred licensee must:

(a) Sign a written consent allowing disclosure and exchange of information between the vendor, the monitoring entity, the licensee's employer, independent third-party evaluators, and treatment providers;

(b) Sign a written consent allowing disclosure and exchange of information between the vendor, the board, the monitoring entity, the licensee's employer, independent third-party evaluators and treatment providers in the event the vendor determines the licensee to be in substantial noncompliance with his or her monitoring agreement. The purpose of the disclosure is to permit the vendor and the monitoring entity to notify the board if the vendor determines the licensee to be in substantial non-compliance with his or her monitoring agreement;

(c) Sign a written statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the vendor within three business days after the licensee is arrested or convicted;

(d) Attest that the licensee is not, to the best of the licensee's knowledge, under investigation by his or her board; and

(e) Agree to and sign a monitoring agreement.

(2) Upon provisional enrollment, the vendor shall send to the monitoring entity copies of the signed consents and the monitoring agreement, described in section (1) of this rule.

(3) Enrollment: To move from provisional enrollment to enrollment in the program, a self-referred licensee must:

(a) Obtain at the licensee's own expense and provide to the vendor, an independent third-party evaluator's written evaluation containing a DSM diagnosis and diagnostic code and treatment recommendations;

(b) Agree to cooperate with the vendor's investigation to determine whether the licensee's practice while impaired presents or has presented a danger to the public; and

(c) Enter into an amended monitoring agreement, if required by the vendor.

(4) Once a self-referred licensee is provisionally enrolled in the program, failure to complete enrollment may constitute substantial non-compliance and may be reported to the board.

(5) Upon enrollment of a self-referred licensee, the vendor shall send to the monitoring entity a copy of the written evaluation by the independent third-party evaluator and a copy of the amended monitoring agreement, if any.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0045

Licensee Responsibilities

(1) Board-referred licensees must:

(a) Comply continuously with his or her monitoring agreement, including any restrictions on his or her practice, for at least two years or longer, as specified by the board by rule or order; and

(b) Be responsible for the cost of evaluations, toxicology testing and treatment.

(2) Self-referred licensees must:

(a) Provide to the vendor a copy of a report of the licensee's criminal history periodically, as required by the vendor;

(b) Comply continuously with his or her monitoring agreement, including any restrictions on his or her practice, for at least two years or longer, as specified by the board by rule or order; and

(c) Be responsible for the cost of evaluations, toxicology testing and treatment.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

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415-065-0050

Unique Identification Number

(1) The vendor shall assign a unique licensee identification number to each licensee the vendor enrolls in the program:

(a) The vendor, the monitoring entity, and the Division shall use the same number and shall include the number in any communications or data exchanges involving the licensee;

(b) The vendor shall not assign the identification number to any other licensee enrolled in the program;

(c) The vendor shall retire the number when the licensee is no longer enrolled in the program; and

(d) The vendor shall reassign the number to the licensee if the vendor reenrolls the licensee at a later date.

(2) The vendor may not use all or a portion of a licensee's social security number as the unique identification number.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0055

Program Requirements

The vendor shall:

(1) Inform the licensee about the program services, requirements, benefits, risks, and confidentiality limitations and ensure that the licensee has signed a consent for services. The consent for services explains:

(a) Information the vendor will give to the board or to the monitoring entity and under what circumstances;

(b) Information the monitoring entity will give to the board and under what circumstances; and

(c) That the board may take action to suspend, restrict, modify, or revoke the licensee's license or end the licensee's participation in the program based on information from the vendor or the monitoring entity.

(2) Enter into a monitoring agreement with the licensee;

(3) Assess the licensee's compliance with his or her monitoring agreement;

(4) Assess the ability of the licensee's employer, when an employer exists to supervise the licensee, and require the employer to establish minimum training requirements for the licensee's supervisor;

(5) Report the licensee's substantial noncompliance with his or her monitoring agreement to the monitoring entity within one business day after the vendor learns of any substantial noncompliance; and

(6) At least weekly, submit a list to the monitoring entity of licensees who are enrolled in the program and a list of licensees who successfully completed the program.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0060

Reports of Substantial Noncompliance

(1) Unless otherwise prohibited by law, when the vendor reports a licensee's substantial noncompliance to the monitoring entity, the report shall include:

(a) A description of the noncompliance;

(b) A copy of the report from the independent third-party evaluator who diagnosed the licensee stating the licensee's diagnosis;

(c) A copy of the licensee's monitoring agreement; and

(d) The licensee's practice or employment status.

(2) In addition to reporting substantial noncompliance to the monitoring entity, the vendor may report substantial noncompliance directly to the licensee's board.

(3) The vendor and the licensee's board may also exchange information in the absence of substantial noncompliance, consistent with the licensee's consent to disclose information.

(4) A positive toxicology result as determined by 49 CFR § 40.87 (2009) must be reported as substantial non-compliance, but positive toxicology results for other drugs and for alcohol may also constitute and may be reported as substantial non-compliance

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0065

Program Services

The vendor shall provide the following services:

(1) Safe Practice Investigations of Self-referred Licensees:

(a) The vendor shall conduct a focused safe-practice investigation of a self-referred licensee to determine whether the licensee's practice while

impaired presents or has presented a danger to the public. The investigation may include vendor interviews with the licensee's employer, supervisor, co-workers, family, or significant others.

(b) The vendor shall complete the investigation within 10 business days of the licensee's provisional enrollment in the program.

(2) Monitoring Agreements:

(a) The vendor shall develop and the licensee shall sign an individualized, written monitoring agreement that is based on the vendor's comprehensive review of the independent third-party's evaluation and treatment recommendations and any other relevant and appropriate information, which may include information from employers, supervisors, co-workers, family, and significant others.

(b) The vendor shall amend the monitoring agreement as necessary to respond to changes in the licensee's situation, with the goal of protecting the public.

(c) The vendor shall give the licensee and their employer, when an employer exists, a copy of the licensee's monitoring agreement, including any amendments, and shall immediately place a copy of the monitoring agreement, including any amendments, in the licensee's individual service record.

(d) The monitoring agreement shall:

(A) Require the licensee to participate in the program for at least two years or longer, as specified by board rule or order;

(B) Require the licensee to participate in a treatment provider's treatment plan;

(C) Outline the limits on the licensee's health profession practice by the vendor and the board;

(D) Notify the licensee that the program, in its discretion, may require the licensee to obtain an evaluation of the licensee's fitness to practice before the program removes limits on the licensee's health profession practice;

(E) Outline methods for the licensee's employer to monitor and report on the licensee's safe practice;

(F) Based on the independent third-party evaluator's evaluation, require the licensee to abstain from all mind-altering or intoxicating substances or potentially addictive drugs, unless the program approves the licensee to use a particular drug prescribed for the licensee by a person authorized by law to prescribe for the licensee's documented medical condition;

(G) Require the licensee to report to the program the licensee's use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours of the licensee's use of the substances or drugs;

(H) Require the licensee to submit to random toxicology testing, per an individualized schedule;

(I) Require the licensee to report his or her arrest for or conviction of a misdemeanor or felony crime to the vendor within three business days if the licensee is arrested or convicted;

(J) Require the licensee to report to the vendor any of the licensee's applications for licensure in other states, changes in employment, changes in practice setting, and changes in residence;

(K) Require the licensee to report at least weekly to the program regarding the licensee's compliance with the agreement; and

(L) Require the licensee to attend compliance consultation group meetings on an individualized schedule based on the vendor's assessment of the licensee's need for additional accountability and structure and based on board's monitoring requirements.

(e) Boards may provide other requirements by rule, including allowing for practice supervision of sole practice licensees or other licensees not in an employment setting.

(3) Compliance Consultation Group Meetings. If required by a board's rules, a licensee identified by the board must attend compliance consultation group meetings. Any board-referred or self-referred licensee may elect to attend the meetings. There may be a fee for the meetings.

(a) The vendor shall conduct or arrange for non-treatment compliance consultation group meetings in which a monitoring consultant meets face-to-face, either directly or by televideo, with licensees identified by a board to determine the licensee's overall compliance with his or her monitoring agreement and for the licensee to gain peer support for his or her compliance efforts.

(b) A monitoring consultant shall conduct each compliance consultation group meeting.

(c) The monitoring consultants shall assess the licensee's progress with his or her monitoring agreement and provide holistic progress reports to the vendor regarding the licensee's status in relation to, but not limited to, his or her: compliance with the monitoring agreement, compliance with

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the treatment provider's treatment plan, recovery activities, emotional and physical health, work-place dynamics, and relationship and boundary concerns.

(d) The licensee's board may elect to pay for the licensee's participation in the compliance consultation group meetings or the board may require the licensee to pay for the service.

(4) Toxicology Testing. The vendor shall ensure that:

(a) The licensee receives a baseline toxicology test within five business days of the date the vendor enrolls the licensee in the program;

(b) The licensee receives a final toxicology test before the licensee is deemed to successfully complete the program;

(c) All monitoring agreements contain provisions requiring three types of toxicology testing:

(A) Testing customized to the licensee's circumstances, including where appropriate requiring expanded toxicology testing drug panels and long-acting alcohol consumption toxicology testing;

(B) Random testing; and

(C) Testing that is required when the vendor has reason to believe that the licensee may have used alcohol or other drugs in violation of the licensee's monitoring agreement.

(d) The vendor's toxicology testing laboratory is certified by the Substance Abuse and Mental Health Services Administration and accredited through the College of American Pathologists Forensic Drug Testing Accreditation Program.

(e) In addition, the laboratory shall perform testing in compliance with OAR 333-024-0305 through OAR 333-024-0350.

(f) Urinalysis specimens are collected in a way that preserves the integrity of the specimen. Unless otherwise provided by the licensee's board by rule, the person collecting the sample must be able to see the licensee void.

(g) If the vendor suspects that the licensee has used alcohol or other drugs in violation of the licensee's monitoring agreement or suspects that the licensee has attempted to provide a false or dilute urine sample, the licensee may be required to provide a directly observed urine specimen under the procedures described in 49 CFR 40.67(g) through (k), including:

(A) A person of the same gender as the licensee must ask the licensee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist, and lower clothing and underpants to demonstrate, by turning around, that the licensee does not have a prosthetic device to dispense urine; and

(B) A person of the same gender as the licensee must watch the urine go from the licensee's body into the specimen collection container.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

415-065-0070

Monitoring Entity

(1) The monitoring entity shall perform its services in cooperation with the program, the Division, the boards and an independent party that will audit the monitoring entity to ensure compliance with program guidelines.

(2) Board referrals. When a board refers a licensee to the program, the monitoring entity shall:

(a) Compare the weekly lists of licensees submitted by the program; and

(b)(A) Report to the licensee's board when the monitoring entity receives information from the program that indicates that:

(B) A licensee is substantially noncompliant with the licensee's monitoring agreement or is no longer participating in the program, but has not successfully completed the program.

(3) Self-referred licensees. When a licensee is self-referred to the program, the monitoring entity:

(a) May not report to the board the licensee's enrollment, participation in the program or successful completion of the program;

(b) Shall compare the weekly lists of licensees submitted by the program; and

(c) Shall report to the licensee's board when the monitoring entity receives information that indicates that a licensee is substantially noncompliant with the licensee's monitoring agreement or is no longer participating in the program, but has not successfully completed the program.

(4) The monitoring entity's reports of licensee substantial non-compliance or failure to complete the program shall include:

(a) A description of the noncompliance;

(b) The independent third-party evaluator's DSM diagnosis and diagnostic code;

(c) A copy of the licensee's monitoring agreement; and

(d) A description of the licensee's employment status.

(5) The monitoring entity shall perform its services in compliance with applicable federal and state confidentiality laws and regulations.

Stat. Auth.: ORS 409.050 & 676.190
Stats. Implemented: ORS 676.185 - 676.200
Hist.: ADS 3-2010, f. & cert. ef. 7-1-10

Department of Human Services, Addictions and Mental Health Division: Mental Health Services Chapter 309

Rule Caption: Standards for payments to Residential Programs.

Adm. Order No.: MHS 9-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 5-1-2010

Rules Adopted: 309-011-0105, 309-011-0110, 309-011-0115

Subject: These all new rules prescribe standards for occupancy payments in residential facilities.

Rules Coordinator: Richard Luthe—(503) 947-1186

309-011-0105

Purpose

(1) The purpose of OAR 309-011-0105 to 309-011-0115 is to establish the standards by which the Addictions and Mental Health (AMH) Division and its designees approve payments to licensed residential programs, funded by the Division or its designee, for adult consumers of mental health services.

(2) OAR 309-011-0105 to 309-011-0115 will facilitate a system of residential services and supports driven by individual needs promoting recovery and wellness.

Stat. Auth.: ORS 430.210, 409.010, 409.050 & 443.450
Stats. Implemented: ORS 443.400 - 443.460 & 443.991
Hist.: MHS 9-2010, f. 6-30-10, cert. ef. 7-1-10

309-011-0110

Definitions

(1) "Adult" means a person 18 years of age or older, an emancipated minor and individuals in the Young Adults in Transition (YAT) programs as designated in contract.

(2) "Community Mental Health Program" (CMHP) means an entity that is responsible for planning and delivery of services for individuals with substance use disorders or mental health diagnoses, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Addictions and Mental Health Division.

(3) "Division" means the Addictions and Mental Health (AMH) Division of the Department.

(4) "Individual Services and Support Plan" (ISSP) means a comprehensive plan for services and supports coordinated for an individual and his or her family, as applicable, that is reflective of the assessment and the intended outcomes of services.

(5) "Occupied" means a specific individual is actively residing in a designated program living space and is receiving services as defined in OAR 309-016-0600 to OAR 309-016-0755.

(6) "Occupancy Rate" means the calculated minimum rate of occupancy in a residential program's Operating Budget that reflects the percentage of occupancy needed to meet expenses.

(7) "Operating Budget" means a division approved budget utilizing division prescribed forms for the purpose of setting rates in residential programs.

(8) "Population Designation" means any term used to describe an individual in terms of their legal status or other category, to include but not limited to those who are civilly committed, admitted voluntarily or under the jurisdiction of the Psychiatric Security Review Board (PSRB).

(9) "Provider" means an organizational entity, or qualified person who is contractually affiliated with a Community Mental Health Program (CMHP) or contracted directly with the Division for the delivery of mental health services to individuals.

(10) "Residential Program" means all licensed Secure Residential Treatment Facilities, Residential Treatment Facilities and Residential Treatment Homes funded by the Addictions and Mental Health (AMH) Division or its designee, to provide services for mental health individuals approved by the Division or its designee.

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(11) "Services" means those activities and treatments described in the Individual Services and Support Plan (ISSP) that are intended to assist the individual to transition to recovery from a substance use disorder, problem gambling disorder or mental health condition.

(12) "Supervision" means the observation and monitoring of individuals by program staff, at intervals necessary in order to maintain safety and an awareness of the individual's personal interaction and use of time.

(13) "Vacancy Rate" means the vacancy percentage calculated in a residential program's Operating Budget that reflects the vacant days available per month without impact on funding.

(14) "Wellness" means an approach to healthcare and lifestyle that emphasizes optimal and holistic physical and mental health and which encourages optimal quality of life while preventing illness and prolonging life.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 430.210, 443.400 - 443.460 & 443.991
Hist.: MHS 9-2010, f. 6-30-10, cert. ef. 7-1-10

309-011-0115

Provider Compensation

(1) Residential program providers will be compensated for services as defined in OAR 309-016-0600 to 309-016-0755.

(2) Only one provider may be compensated for each day. Individuals absent from the residential program on activities under the supervision of the program staff shall be considered as occupying their designated living space.

(3) The Division may make a Reserved Service Capacity Payment due to an acute care/respite admission or based on an Order of Revocation issued by the Psychiatric Security Review Board. In order to receive such funding the provider must:

(a) Notify the Division within 48 hours by submitting a Reserved Service Capacity Payment form via email to: car.amh@state.or.us. The Division will approve/deny the request within 2 business days of receiving the request.

(b) Receive approval from the Division prior to receiving such payment.

(c) For payment request, submit a contract amendment request and the approved Reserved Service Capacity Payment Request Form with the Client Status portion completed, at the end of each approval period.

(d) Use policies, procedures and forms prescribed by the Division for the notification and request for payment.

(4) All residential program living spaces funded by the Division or its designee will be available to any consumer approved by the Division or its designee without regard to their population designation or County of Responsibility.

Stat. Auth.: ORS 409.010, 409.050 & 443.450
Stats. Implemented: ORS 430.210, 443.400 - 443.460 & 443.991
Hist.: MHS 9-2010, f. 6-30-10, cert. ef. 7-1-10

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**Department of Human Services,
Administrative Services Division and Director's Office
Chapter 407**

Rule Caption: Abuse Reporting and Protective Services for Adults with Developmental Disabilities or Mental Illness.

Adm. Order No.: DHSD 4-2010

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 6-29-10

Notice Publication Date: 6-1-2010

Rules Adopted: 407-045-0370

Rules Amended: 407-045-0250, 407-045-0260, 407-045-0280, 407-045-0290, 407-045-0300, 407-045-0310, 407-045-0320, 407-045-0330, 407-045-0340, 407-045-0350, 407-045-0360

Rules Repealed: 407-045-0260(T), 407-045-0290(T), 407-045-0350(T)

Subject: The Department of Human Services' (Department) Office of Investigations and Training (OIT) filed temporary rules, effective January 1, 2010, that updated the rules in OAR chapter 407, division 45 to comply with the 2009 legislative changes from House Bill 2442. OIT is permanently amending the abuse investigation and protective services rules in OAR chapter 407, division 45 to comply with the 2009 legislative changes from House Bill 2442. These amendments expand the definition of abuse in OAR 407-045-0260 for incidents occurring on or after January 1, 2010; adopt OAR 407-045-0370 for multidisciplinary teams (MDT) including exceptions to

confidentiality that allow disclosure of client information; add requirements for notification of investigation outcome to the alleged victim in OAR 407-045-0320; clarify that timelines for notice of parties and review of investigation reports are measured in working days in OAR 407-045-0290 and 407-045-0320; describe immunity provisions for employers who share substantiated abuse information about their employees or former employees in OAR 407-045-0350; and propose general housekeeping changes to reflect current practices and improve readability.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-045-0250

Purpose

These rules, OAR 407-045-0250 to 407-045-0370, prescribe standards and procedures for the investigation of, assessment for, and provision of protective services in community programs and community facilities, and the nature and content of the abuse investigation and protective services report.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0200, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0050, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0260

Definitions

As used in OAR 407-045-0250 to 407-045-0370, the following definitions apply:

(1) "Abuse of an adult with developmental disabilities" means:

(a) "Abandonment" including desertion or willful forsaking by a person who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(b) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.

(c) "Financial exploitation" including:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an adult.

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out.

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an adult.

(D) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult. "Effectively" means use of income or assets for the benefit of the adult.

(d) "Involuntary seclusion" means the involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult. Involuntary seclusion may include placing restrictions on an adult's freedom of movement by restriction to his or her room or a specific area, or restriction from access to ordinarily accessible areas of the facility, residence, or program, unless agreed to by the Individual Support Plan (ISP) team included in an approved Behavior Support Plan (BSP) or included in a brokerage plan's specialized support. Restriction may be permitted on an emergency or short term basis when an adult's presence would pose a risk to health or safety.

(e) "Neglect" including:

(A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that creates a risk of significant harm or results in actual harm to an adult. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult

(B) Failure of a caregiver to make a reasonable effort to protect an adult from abuse.

(f) "Physical abuse" means:

(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.

(B) Willful infliction of physical pain or injury.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.

(g) "Sexual abuse" including:

(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(B) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual

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favours. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact and other physical conduct directed toward an adult.

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion.

(E) Any sexual contact between an adult with a developmental disability and a relative of the person with a developmental disability other than a spouse or partner. "Relative" means a parent, grandparent, children, brother, sister, uncle, aunt, niece, nephew, half brother, half sister, stepparent, or stepchild.

(F) As defined in ORS 163.305, "sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(h) "Wrongful restraint" means:

(A) A wrongful use of a physical or chemical restraint, excluding an act of restraint prescribed by a licensed physician, by any adult support team approved plan, or in connection with a court order.

(B) "Wrongful restraint" does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided only that the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(i) "Verbal abuse" includes threatening significant physical harm or causing emotional harm to an adult through the use of:

(A) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an adult.

(D) For purposes of this section, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, or sight if gestured, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(j) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to abuse.

(2) "Abuse of an adult with mental illness" means:

(a) Death of an adult caused by other than accidental or natural means or occurring in unusual circumstances.

(b) "Neglect" including:

(A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that results in actual harm or significant mental injury to an adult. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

(B) Failure of a caregiver to make a reasonable effort to protect an adult from abuse.

(c) "Physical abuse" means:

(A) Any physical injury by other than accidental means or that appears to be at variance with the explanation given for the injury.

(B) Willful infliction of physical pain or injury.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults otherwise incapable of expressing pain.

(d) "Sexual abuse" including:

(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315.

(B) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language including requests for sexual favours. Sexual harassment or exploitation includes but is not limited to any sexual contact or failure to discourage sexual contact between an employee of a community facility or community program, provider, or other caregiver and an adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome physical sexual contact including requests for sexual favours and other physical conduct directed toward an adult.

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver. Sexual abuse does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse or partner of the adult.

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion.

(E) As defined in ORS 163.305, "sexual contact" means any touching of sexual or other intimate parts of a person or causing such person to touch sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(e) For the purpose of section (2) of this rule, the following definitions apply:

(A) "Employee" means an individual who provides a program service or who takes part in a program service and who receives wages, a salary, or is otherwise paid by the program for providing the service.

(B) "Program staff" means an employee or individual who, by contract with the program, provides a service and who has the applicable competencies, qualifications, and certification, required by the Integrated Services and Supports Rule (ISSR) (OAR 309-032-1500 to 309-032-1565) to provide the service.

(C) "Provider" means a qualified individual or an organizational entity operated by or contractually affiliated with a community mental health program, or contracted directly with the Department of Human Services' (Department) Addictions and Mental Health Division (AMH) for the direct delivery of mental health services and supports.

(D) "Volunteer" means an individual who provides a program service or who takes part in a program service and who is not an employee of the program and is not paid for services. The services must be non-clinical unless the individual has the required credentials to provide a clinical service.

(E) In addition to the definitions of abuse in section (2)(a) through (d), abuse also has the following meanings for employees, program staff, providers, and volunteers:

(i) "Abandonment" including desertion or willful forsaking by an individual who has assumed responsibility for providing care when the desertion or forsaking results in harm or places the adult at a risk of serious harm.

(ii) "Financial exploitation" including:

(I) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an adult.

(II) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out.

(III) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an adult.

(IV) Failing to use the income or assets of an adult effectively for the support and maintenance of the adult. "Effectively" means use of income or assets for the benefit of the adult.

(iii) "Involuntary Seclusion" means the involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult. Involuntary seclusion may include placing restrictions on an adult's freedom of movement by restriction to his or her room or a specific area or restriction from access to ordinarily accessible areas of the facility, residence, or program unless agreed to by the treatment plan. Restriction may be permitted on an emergency or short term basis when an adult's presence would pose a risk to health or safety.

(iv) "Neglect" including active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an adult that creates a significant risk of harm to an adult or results in actual harm or significant mental injury to an adult. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of the adult.

(v) "Verbal abuse" includes threatening significant physical harm or causing emotional harm to an adult through the use of:

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(I) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule.

(II) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(III) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the well-being of an adult.

(IV) For purposes of this section, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance or sight, regardless of their ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard.

(V) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(vi) "Wrongful restraint" means:

(I) A wrongful use of a physical or chemical restraint excluding an act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730.

(II) Abuse does not include physical emergency restraint to prevent immediate injury to an adult who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(f) An adult who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall for this reason alone not be considered subjected to abuse.

(3) "Abuse Investigation and Protective Services Report" means a completed report.

(4) "Adult" means an adult who is 18 years of age or older who:

(a) Has a developmental disability and is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or

(b) Has a mental illness and is receiving services from a community program or facility.

(c) Receives services from a community program or facility or care provider which is licensed or certified by or contracts with the Department; and

(d) Is the alleged abuse victim.

(5) "Adult protective services" means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts, and to safeguard an allegedly abused adult's person, property, or funds.

(6) "Brokerage" or "Support service brokerage" means an entity, or distinct operating unit within an existing entity, that performs the functions listed in OAR 411-340-0120(1)(a) to (g) associated with planning for and implementation of support services for an adult with developmental disabilities.

(7) "Caregiver" means an individual or facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(8) "Community facility" means a community residential treatment home or facility, community residential facility, adult foster home, community residential training home or facility, or a facility approved by AMH for acute care services or crisis respite.

(9) "Community program" means the community mental health or developmental disabilities program as established in ORS 430.610 to 430.695.

(10) "Designee" means the community program.

(11) "Department" means the Department of Human Services.

(12) "Inconclusive" means there is insufficient evidence to conclude the alleged abuse occurred or did not occur by a preponderance of the evidence. The inconclusive determination may be used only in the following circumstances:

(a) After diligent efforts have been made, the protective services investigator is unable to locate the person alleged to have committed the abuse, or cannot locate the alleged victim or another individual who might have information critical to the investigation; or

(b) Relevant records or documents are unavailable, or there is conflicting or inconsistent information from witnesses, documents, or records with the result that after the investigation is complete, there is insufficient evidence to support a substantiated or not substantiated conclusion.

(13) "Law enforcement agency" means any city or municipal police department, county sheriff's office, the Oregon State Police, or any district attorney.

(14) "Mandatory reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that an adult has suffered abuse, or that any individual with whom the official comes in contact while acting in an official capacity has abused an adult. Pursuant to ORS 430.765(2), psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 20.295.

(15) "Not substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(16) "OIT" means the Department's Office of Investigations and Training.

(17) "Provider agency" means an entity licensed or certified to provide services, or which is responsible for the management of services to clients.

(18) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor, or podiatrist, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide, or employee of an in-home health services organization;

(c) Employee of the Department, county health department, community mental health or developmental disabilities program, or private agency contracting with a public body to provide any community mental health services;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech, or occupational therapist;

(h) Information and referral, outreach, or crisis worker;

(i) Attorney;

(j) Firefighter or emergency medical technician; or

(k) Any public official who comes in contact with adults in the performance of the official's duties.

(19) "Substantiated" means that the preponderance of evidence establishes the abuse occurred.

(20) "Unbiased investigation" means an investigation that is conducted by a community program that does not have an actual or potential conflict of interest with the outcome of the investigation.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0210, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0060, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0280

Training for Adults Investigating Reports of Alleged Abuse

(1) The Department shall provide sufficient and timely training and consultation to community programs to ensure that the community program is able to conduct a thorough and unbiased investigation and reach a conclusion about the abuse. Training shall include initial and continuing education of any individual designated to conduct protective services investigations.

(2) The training shall address the cultural and social diversity of the State of Oregon.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0080, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0290

General Duties of the Community Program and Initial Action on Report of Alleged Abuse

(1) For the purpose of carrying out these rules, community programs are Department designees.

(2) If mandatory reporters have reasonable cause to believe abuse has occurred, the reporter must report the abuse to the community program and to a local law enforcement agency when the reporter believes a crime may have been committed.

(3) Each community program shall designate at least one employee to conduct protective services investigations. Community programs shall require their designated protective services investigators to participate in training and to demonstrate an understanding of investigative core competencies.

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(4) If the Department or community program has reasonable cause to believe abuse occurred, it must immediately notify the appropriate public licensing or certifying agency and provide a copy of the abuse investigation and completed protective services report.

(5) If the Department or community program has reasonable cause to believe that an individual licensed or certified by any state agency to provide care has committed abuse, it must immediately notify the appropriate state licensing or certifying agency and provide that agency with a copy of the abuse investigation and completed protective services report.

(6) The Department or community program may share information prior to the completion of the abuse investigation and protective services report if the information is necessary for:

- (a) The provision of protective services; or
- (b) The function of licensing and certifying agencies or law enforcement agencies.

(7) Each community program must establish an after hours reporting system.

(8) Upon receipt of any report of alleged abuse or upon receipt of a report of a death that may have been caused by other than accidental or natural means, the community program must begin:

(a) Investigation into the nature and cause of the alleged abuse within one working day of receipt of the report to determine if abuse occurred or whether a death was caused by abuse;

- (b) Assessment of the need for protective services; and
- (c) Provision of protective services, if protective services are needed.

(9) The community program receiving a report alleging abuse must document the information required by ORS 430.743(1) and any additional reported information. The community program must attempt to elicit the following information from the individual making a report:

- (a) The name, age, and present location of the adult;
- (b) The names and addresses of the adult's programs or facilities responsible for the adult's care;

(c) The nature and extent of the alleged abuse, including any evidence of previous abuse of the adult or evidence of previous abuse by the person alleged to have committed the abuse;

(d) Any information that led the individual making the report to suspect abuse had occurred;

(e) Any information that the individual believes might be helpful in establishing the cause of the abuse and the identity of the person alleged to have committed the abuse; and

- (f) The date of the incident.

(10) The community program shall maintain all reports of abuse in a confidential location.

(11) If there is reason to believe a crime has been committed, the community program must contact the law enforcement agency with jurisdiction in the county where the report is made.

(12) If there is reasonable cause to believe that abuse has occurred, the community program must determine if the adult is in danger or in need of immediate protective services and shall provide those services immediately. Under these circumstances, the community program must also advise the provider agency, brokerage, or guardian about the allegation, and must include any information appropriate or necessary for the health, safety, and best interests of the adult in need of protection.

(13) The community program shall immediately, but no later than one working day, notify the Department it has received a report of abuse, in the format provided by the Department.

(14) If the community program determines from the report that there is no reasonable cause to believe abuse occurred, the community program shall notify the provider agency or brokerage within five working days that a protective services investigation shall not commence and explain the reasons for that decision. The community program shall document the notice and maintain a record of all notices.

(15) If the community program determines that a report will be assigned for investigation, the community program must notify the provider agency, brokerage, guardian, and any other individual with responsibility for providing services and protection, unless doing so would compromise the safety, health, or best interests of the adult in need of protection, or would compromise the integrity of the abuse investigation or a criminal investigation. The notice shall include information that the case shall be assigned for investigation, identify the investigator, and provide information regarding how the assigned investigator may be contacted. The notice must be provided within five working days from the date the report was received.

(16) The community program or law enforcement agency shall notify the appropriate medical examiner in cases where the community program

or law enforcement agency finds reasonable cause to believe that an adult has died as a result of abuse or where the death occurred under suspicious or unknown circumstances.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0230, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0090, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0300

Investigation of Alleged Abuse

(1) Investigation of abuse shall be thorough and unbiased. Community programs may not investigate allegations of abuse made against employees of the community program. Investigations of community program staff shall be conducted by the Department or other community programs not subject to an actual or potential conflict of interest.

(2) In conducting an abuse investigation, the investigator must:

- (a) Make in-person contact with the adult;
- (b) Interview the adult, witnesses, the person alleged to have committed the abuse, and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances. Interviews must be conducted in-person where practicable. The investigator must attempt to elicit the date of birth for each individual interviewed and shall obtain the date of birth of any person alleged to have committed the alleged abuse;
- (c) Review all evidence relevant and material to the complaint; and
- (d) Photograph the adult consistent with forensic guidelines, or arrange for the adult to be photographed, to preserve evidence of the alleged abuse and of the adult's physical condition at the time of investigation, unless the adult knowingly refuses.

(3) All records necessary for the investigation shall be available to the community program for inspection and copying. A community facility shall provide community programs access to employees, the adult, and the premises for investigation purposes.

(4) When a law enforcement agency is conducting a criminal investigation of the alleged abuse, the community program shall also perform its own investigation as long as it does not interfere with the law enforcement agency investigation under the following circumstances:

- (a) There is potential for action by a licensing or certifying agency;
- (b) Timely investigation by law enforcement is not probable; or
- (c) The law enforcement agency does not complete a criminal investigation.

(5) When a law enforcement agency is conducting an investigation of the alleged abuse, the community program must communicate and cooperate with the law enforcement agency.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0240, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0100, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0310

Assessment for and Provision of Protective Services to the Adult

The community program shall ensure that appropriate and necessary protective services are provided to the adult to prevent further abuse and must be undertaken in a manner that is least intrusive to the adult and provide for the greatest degree of independence available within existing resources. Assessment for the provision of protective services may include:

- (1) Arranging for the immediate protection of the adult;
- (2) Contacting the adult to assess his or her ability to protect his or her own interest or give informed consent;
- (3) Determining the ability of the adult to understand the nature of the protective service and his or her willingness to accept services;
- (4) Coordinating evaluations to determine or verify the adult's physical and mental status, if necessary;
- (5) Assisting in and arranging for appropriate services and alternative living arrangements;
- (6) Assisting in or arranging the medical, legal, financial, or other necessary services to prevent further abuse;
- (7) Providing advocacy to assure the adult's rights and entitlements are protected; and

(8) Consulting with the community facility, program, brokerage, or others as appropriate in developing recommendations or requirements to prevent further abuse.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0250, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0110, DHSD 5-2007, f.

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6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0320

Abuse Investigation and Protective Services Report

(1) The Department shall provide abuse investigation and protective services report formats.

(2) Upon completion of the investigation and within 45 calendar days of the date the community program determines a report alleging abuse shall be assigned for investigation, the community programs shall prepare an abuse investigation and protective services report. This 45-day time period does not include an additional five-working day period allowing OIT to review and approve the report. The protective services report shall include:

(a) A statement of the allegations being investigated, including the date, location, and time;

(b) A list of protective services provided to the adult;

(c) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;

(d) A summary of findings and conclusion concerning the allegation of abuse;

(e) A specific finding of “substantiated,” “inconclusive,” or “not substantiated”;

(f) A plan of action necessary to prevent further abuse of the adult;

(g) Any additional corrective action required by the community program and deadlines for completing these actions;

(h) A list of any notices made to licensing or certifying agencies;

(i) The name and title of the individual completing the report; and

(j) The date the report is written.

(3) In cases where, for good cause shown, the protective services investigator cannot complete the report within 45 days, the investigator shall submit a request for time extension to OIT.

(a) An extension may be granted for good cause shown which includes but is not limited to:

(A) When law enforcement is conducting an investigation;

(B) A material party or witness is temporarily unavailable;

(C) New evidence is discovered;

(D) The investigation is complex (e.g. large numbers of witnesses need to be interviewed taking into account scheduling difficulties and limitations, consultation with experts, or a detailed review of records over an extended period of time is required); or

(E) For some other mitigating reason.

(b) When granting an extension, OIT shall consult with the program about the need for an extension and determine the length of the extension as necessary.

(c) The community program shall notify the provider agency, brokerage, and guardian when an extension is granted and advise them of the new report due date.

(4) A copy of the final abuse investigation and protective services report shall be provided to the Department within five working days of the report’s completion and approval by OIT.

(5) The community program must provide notice of the outcome of the investigation, or assure that notice is provided to the alleged victim, guardian, provider agency and brokerage, accused person, and to any law enforcement agency which previously received notice of the initial report. Notice of outcome shall be provided to a reporter upon the reporter’s request. Notice of outcome must be made within five working days after the date the case is completed and approved by OIT. The community program must document how the notice was provided.

(6) A centralized record of all abuse investigation and protective services reports shall be maintained by community programs for all abuse investigations conducted in their county, and by the Department for all abuse investigations in the state.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0260, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0120, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0330

Disclosure of the Abuse Investigation and Protective Services Report and Related Documents

(1) Portions of the abuse investigation and protective services report and underlying investigatory documents are confidential and are not available for public inspection. Pursuant to ORS 430.763, names of abuse reporters, witnesses, and the alleged abuse victim are confidential and shall

not be available for public inspection. Investigatory documents, including portions of the abuse investigation and protective services report that contains “individually identifiable health information,” as that term is defined under ORS 192.519 and 45 CFR 160.103, are confidential under federal Health Insurance Portability and Accountability Act (HIPAA) privacy rules, 45 CFR Parts 160 and 164, and ORS 192.520 and 179.505-179.509.

(2) Notwithstanding section (1) of this rule, the Department shall make confidential information available, including any photographs if appropriate, to any law enforcement agency, public agency that licenses or certifies facilities or licenses or certifies the individuals practicing therein, and any public agency providing protective services for the adult. The Department shall make the protective services report and underlying investigatory materials available to any private agency providing protective services for the adult and to the protection and advocacy system designated pursuant to ORS 192.517(1).

(3) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and shall not redisclose the confidential information to unauthorized individuals or entities, as required by state or federal law.

(4) The community program shall prepare a redacted version of the final completed abuse investigation report within 10 days after the date of the final report. The redacted report shall not contain any confidential information which is prohibited from disclosure pursuant to state or federal law. The redacted report shall be submitted to the provider agency and brokerage.

(5) The community program shall provide a redacted version of the written report to the public for inspection upon written request.

(6) When the abuse investigation and protective services report is conducted by a community program as the Department’s designee, the protective services investigation may be disclosed pursuant to this rule either by the community program or the Department.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0270, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0130, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0340

Prohibition Against Retaliation

(1) A community facility, community program, or individual shall not retaliate against any individual who reports suspected abuse in good faith, including the adult.

(2) Any community facility, community program, or individual that retaliates against any individual because of a report of suspected abuse shall be liable, according to ORS 430.755, in a private action to that individual for actual damages and, in addition, a civil penalty up to \$1,000, notwithstanding any other remedy provided by law.

(3) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, “adverse action” means any action taken by a community facility, community program, or individual involved in a report against the individual making the report or against the adult because of the report and includes but is not limited to:

(a) Discharge or transfer from the community facility, except for clinical reasons;

(b) Termination of employment;

(c) Demotion or reduction in remuneration for services; or

(d) Restriction or prohibition of access to the community facility or its residents.

(4) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Authority: ORS 179.040 & 409.050

Stats. Implemented: ORS 430.735–430.765, 443.400–443.460, 443.705–443.825

Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0280, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0140, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0350

Immunity of Individuals Making Reports in Good Faith

(1) Any individual who makes a good faith report and who had reasonable grounds for making the report shall have immunity from civil liability with respect to having made the report.

(2) The reporter shall have the same immunity in any judicial proceeding resulting from the report as may be available in that proceeding.

(3) An individual who has personal knowledge that an employee or former employee of the adult was found to have committed abuse is

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immune from civil liability for the disclosure to a prospective employer of the employee of known facts concerning the abuse.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825
Hist.: OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0150, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 12-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-29-10; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0360

Department Investigation of Alleged Abuse

(1) If determined necessary or appropriate, the Department may conduct an investigation rather than allow the community program to investigate the alleged abuse or in addition to the investigation by the community program. Under such circumstances, the community program must receive authorization from the Department before conducting any separate investigation.

(2) The community program shall make all records necessary for the investigation available to the Department for inspection and copying. The community facilities and community programs must provide the Department access to employees, the adult, and the premises for investigation purposes.

Stat. Authority: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825
Hist.: MHD 5-1994, f. 8-22-94 & cert. ef. 9-1-94; Renumbered from 309-040-0290, OMAP 87-2004, f. 11-10-04, cert. ef. 12-1-04; Renumbered from 410-009-0160, DHSD 5-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 3-2009, f. & cert. ef. 5-1-09; DHSD 4-2010, f. & cert. ef. 6-29-10

407-045-0370

County Multidisciplinary Teams

(1) The community program must participate in its county Multidisciplinary Team (MDT) to coordinate and collaborate on protective services for the abuse of adults with developmental disabilities or mental illness or both.

(2) All confidential information protected by state and federal law that is shared or obtained by MDT members in the exercise of their duties on the MDT is confidential and may not be further disclosed except as permitted by law.

(3) The community program or OIT shall provide an annual report to the MDT reporting the number of investigated and substantiated allegations of abuse of adults and the number referred to law enforcement in the county.

Stat. Auth.: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735-430.765, 443.400-443.460, 443.705-443.825
Hist.: DHSD 4-2010, f. & cert. ef. 6-29-10

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Rule Caption: Abuse Reporting and Protective Services in Children's Care Provider (CCP) Settings.

Adm. Order No.: DHSD 5-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 407-045-0800, 407-045-0810, 407-045-0820, 407-045-0830, 407-045-0850, 407-045-0860, 407-045-0870, 407-045-0880, 407-045-0890, 407-045-0900, 407-045-0910, 407-045-0920, 407-045-0930, 407-045-0940, 407-045-0950, 407-045-0960, 407-045-0970, 407-045-0980

Subject: These rules are being amended to provide additional clarification for definitions; to provide for a right of review for provider agencies substantiated for abuse, to permit accused persons to have peer support during abuse investigation interviews, to clarify the time frame for completion of abuse investigations, and to describe the membership on the substantiation review panel.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-045-0800

Scope

These rules (OAR 407-045-0800 to 407-045-0980) prescribe standards and procedures for investigating, assessing, and providing protective services in certain therapeutic or treatment programs, when abuse or neglect of a child is reported to have occurred. Specifically, these rules govern children's residential care agencies, day treatment programs, therapeutic boarding schools, foster care agencies, and outdoor youth programs (hereafter, "children's care providers" or "CCPs"). These rules also set forth the nature and content of the abuse investigation, the protective services report, and review rights and procedure.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.015, 418.205-418.327, & 419B.005-419B.050
Hist.: DHSD 12-2007(Temp), f. & cert. ef. 12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0810

General Policy and Applicability

(1) Every child deserves safe, respectful, and dignified treatment provided in a caring environment. All CCPs governed by these rules, and their staff, shall conduct themselves in such a manner that children are free from abuse.

(2) In these rules, the term "abuse" is defined in some detail because of the unique vulnerabilities of children served by CCPs and the nature of the settings where abuse may occur. All forms of abuse are prohibited. CCPs and their staff must always be aware of the potential for abuse in interactions with children.

(3) These rules govern reports of abuse or neglect in which the CCP, or its staff, is reported to be responsible. All such reports shall be investigated by the Department of Human Services's (Department) Office of Investigations and Training (OIT).

(4) OIT shall evaluate each case based on available facts and on the individual circumstances of the child, including the child's particular vulnerabilities.

(5) Nothing in these rules relieves any mandatory reporter, including a CCP, from reporting abuse or neglect alleged to have been caused by other individuals, including but not limited to family members. Those reports shall continue to be investigated by the Department's Children, Adults and Families Division (CAF) or by law enforcement.

Stat. Auth.: ORS 409.050, 418.005 & 418.189
Stats. Implemented: ORS 418.189 & 418.205 - 418.327
Hist.: DHSD 12-2007(Temp), f. & cert. ef. 12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0820

Definitions

The following definitions apply to OAR 407-045-0800 through 407-045-0980:

(1) "Abuse" includes but is not limited to:

(a) Any assault, as defined in ORS Chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(b) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(c) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration, and incest, as defined in ORS chapter 163.

(d) Sexual abuse, as defined in ORS Chapter 163.

(e) Sexual exploitation which includes but is not limited to:

(A) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces, or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording, or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670;

(B) Sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; or

(C) Allowing, permitting, encouraging, or hiring a child to engage in prostitution, as defined in ORS chapter 167.

(f) Negligent treatment or maltreatment of a child which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare.

(g) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(h) Buying or selling an individual under 18 years of age, as described in ORS 163.537.

(i) Permitting an individual under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(j) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(2) "Child" means an unmarried individual under 18 years of age.

(3) "Children's care provider (CCP)" means a licensed residential care agency, day treatment program, foster care agency, therapeutic boarding school, or outdoor youth program that has assumed responsibility for all

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or a portion of the care of a child. The term includes the CCP's employees, agents, contractors and their employees, and volunteers.

(4) "Day treatment program" means a licensed CCP that provides day treatment services.

(5) "Day treatment services" means comprehensive, interdisciplinary, nonresidential, community based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to children with emotional disturbances.

(6) "Department" means the Department of Human Services.

(7) "Designated medical professional" means a medical professional as defined in ORS 418.747 who has been trained to conduct child abuse medical assessments pursuant to ORS 418.782.

(8) "Foster care agency" means a licensed child-caring agency that offers to place children by taking physical custody of and then placing the children in homes certified by that agency.

(9) "Inconclusive" means a preponderance of evidence is not available to determine whether the alleged abuse did or did not occur. Evidence may be inconclusive because relevant witnesses, documents, or records are unavailable, or because there is conflicting or inconsistent information from witnesses, documents, or records, with the result that at the conclusion of the investigation there is insufficient evidence to support a "substantiated" or a "not substantiated" conclusion.

(10) "Legal finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of an OIT substantiation.

(11) "Likely to endanger the health or welfare of the child" means negligent treatment or maltreatment that is likely to result in harm to the child, based on the available facts, and on the individual child's particular physical, emotional, behavioral, or mental health needs, circumstances, or vulnerabilities.

(12) "Maltreatment" means any action toward a child which carries a risk of harm to the child's physical, emotional, behavioral, or mental health or welfare. Examples of staff behaviors that must be reported as potential abuse by maltreatment include but are not limited to the willful infliction of pain or injury (e.g. hitting, kicking, pushing, arm twisting, head twisting, etc.); exposure to domestic violence; inappropriate or excessive force during a containment hold or restraint; or other physical contact with the child inconsistent with prescribed treatment or care. All injuries during a restraint or hold must be reported, including minor injuries. Other behaviors that must be reported include the use of derogatory names, phrases, profanity, ridicule, harassment, intimidation, or coercion. While such behaviors do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the actions were likely to endanger the child's health or welfare.

(13) "Mandatory reporter" means an individual or entity having a duty to report as defined in ORS 419B.005 to 419B.050.

(14) "Negligent treatment" means failure to perform duties or failure to take action required to protect the child's health or welfare. Examples of staff behaviors that must be reported as potential abuse by negligent treatment include but are not limited to failure to supervise a child or failure to intervene when a child needs assistance or care. While such failures do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the failures were likely to endanger the child's health or welfare.

(15) "Not substantiated" means the allegation is unfounded because the investigator concludes there is no reasonable cause to believe abuse occurred based on the available evidence.

(16) "OIT" means the Department's Office of Investigations and Training.

(17) "OIT investigator" means an employee of the Department's OIT who is authorized and trained to investigate reports of child abuse or neglect under these rules.

(18) "OIT Substantiation Review Committee (OSRC)" means a group of three Department employees selected by the Department's Deputy Director or designee, none of whom was involved in any part of the investigation that resulted in the OIT substantiation under review. The committee must consist of Department employees who are knowledgeable about the dynamics of child abuse and neglect, including the assessment or investigation of child abuse and neglect, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings.

(19) "Outdoor youth program" means a licensed program that provides, in an outdoor living setting, services to youth who are enrolled in the program because they have behavioral or mental problems, or problems with abuse of alcohol or drugs. "Outdoor youth program" does not include

any program, facility, or activity operated by a governmental entity, operated or affiliated with the Oregon Youth Conservation Corps, or licensed by the Department as a child-caring agency under other Department authority. It does not include outdoor activities for youth designed to be primarily recreational such as YMCA, Outward Bound, Boy Scouts, Girl Scouts, Campfire, church groups, or other similar activities.

(20) "Person" means the person OIT has reasonable cause to believe is responsible for child abuse in a substantiated OIT report, and about whom a substantiated finding has been made.

(21) "Protective action" means a set of services or activities undertaken to address and meet a child's safety needs after a report of abuse has been received by OIT.

(22) "Residential care agency" means a licensed child-caring agency that provides services to children 24 hours a day.

(23) "Substantiated" means that a preponderance of evidence establishes the alleged abuse occurred.

(24) "Suspicious physical injury" is defined in ORS 419B.005 and includes but is not limited to burns or scalds; extensive bruising or abrasions on any part of the body; bruising, swelling, or abrasions on the head, neck, or face; fractures of any bone in a child under the age of three; multiple fractures in a child of any age; dislocations, soft tissue swelling, or moderate to severe cuts; loss of the ability to walk or move normally according to the child's developmental ability; unconsciousness or difficulty maintaining consciousness; multiple injuries of different types; injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or any other injury that threatens the physical well-being of the child.

(25) "Therapeutic boarding school" means a licensed organization or a program in an organization that:

- (a) Is primarily a school and not a residential care agency;
- (b) Provides educational services and care to children 24 hours a day; and

(c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or ensuring that children receive therapeutic services.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.189, 418.205-418.327, 418.747, 419B.005-419B.050 & 419B.328

Hist.: DHSD 12-2007(Temp), f. & cert. ef. 12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0830

Training of Children's Care Providers

(1) The Department shall provide training and consultation to CCPs to identify abuse and to prevent abuse from occurring.

(2) The Department shall provide training to assist CCPs to understand the abuse investigation process and the CCP's responsibility in cooperating with the investigation.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.189 & 418.702

Hist.: DHSD 12-2007(Temp), f. & cert. ef. 12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0850

Responsibilities of the CCP

(1) CCPs and their staff are mandatory reporters governed by ORS 419B.005 to 419B.050. Mandatory reporters must immediately report when they have reasonable cause to believe any child with whom they have come in contact has suffered abuse or that any person with whom they have come in contact has abused a child. For purposes of reporting, the belief need only be a reasonable suspicion, and does not need to rise to the level of probable cause. All reports must be made verbally or in writing to the Department or to a law enforcement agency within the county where the individual making the report is located at the time of the contact.

(2) Concurrent with reporting the suspected abuse or neglect of a child, CCPs shall immediately assess the safety of the child and take any action necessary to remove the child from danger and keep the child safe. CCPs shall cooperate with OIT in establishing a safety plan for the child who is the subject of the report, and for other children who may be at risk of abuse or neglect. In establishing a safety plan, CCPs may not take any actions beyond determining:

- (a) Whether the alleged victim is in danger or in need of immediate protective services, in light of the nature of the report; and
- (b) Whether any immediate personnel action needs to be taken.

(c) When taking protective action as described in section (2) above, the CCP may not conduct an internal investigation without prior authorization from OIT. For purposes of this section, a prohibited internal investigation includes:

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(A) Interviews with the alleged victim, witnesses, the accused person, or any other individual or witness who may have knowledge of the facts of the abuse allegation or related circumstances that include questions beyond those necessary for immediate protection of the child or other children; or

(B) Review of relevant evidence, other than the initial report or other documents necessary for immediate protection of the child or other children.

(3) CCPs shall document all reports of suspected abuse or neglect of a child including, to the extent possible, the following information:

- (a) The name, age, and present location of the child;
- (b) The names and addresses of individuals, programs, or facilities responsible for the child's care;
- (c) The nature and extent of the alleged abuse;
- (d) Any information that led the individual making the report to suspect abuse had occurred;
- (e) Any information that the individual believes might aid in establishing the cause of the abuse and the identity of the individual alleged to be responsible for the abuse; and
- (f) The date of the incident.

(4) Every CCP shall cooperate fully with OIT under these rules. Cooperation includes but is not limited to:

- (a) Providing the investigator with access to the child, the facility, and to all potential witnesses; and
- (b) Producing all records and reports requested, including but not limited to medical, psychiatric and psychological records and reports, and individual service or behavioral support plans for the child.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 419B.010-419B.015

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0860

Responsibilities of the Office of Investigations and Training

(1) When OIT receives a report of abuse, OIT shall notify a law enforcement agency within the county where the report was made. If the abuse is reported to have occurred in a different county, OIT must also cross-report to the law enforcement agency in the county where the reported abuse occurred.

(2) OIT shall cross-report to law enforcement on the same day the OIT screener determines the report requires an immediate or a 24-hour response.

(a) Required same day cross-reports include but are not limited to reports of moderate to severe physical abuse, visible injuries to a child, sexual abuse, or the suspicious or unexpected death of a child. Same day reports may be cross-reported verbally, by electronic transmission, or by hand delivery.

(b) When a cross-report is verbal and OIT and law enforcement do not respond to the report together, OIT must send a completed screening report to law enforcement.

(3) All other reports, including those investigated at screening but closed, must be cross-reported to law enforcement no later than ten days after the Department receives the report. The cross-report may be made by electronic transmission, hand delivery, or regular mail.

(4) When OIT receives a report of alleged abuse or neglect, OIT shall notify the child's parent or legal guardian that an allegation has been made, unless notice is prohibited by law or court order or would compromise the child's safety or a criminal investigation. If the child is in the legal custody of the Department, OIT shall notify the child's assigned Department caseworker, if notice has not already been provided. If the child has been placed at the CCP through the Oregon Youth Authority (OYA), OIT shall notify OYA. If OIT has reason to believe the child is an Indian child, OIT shall notify the tribe within 24 hours from the time the report was received by the Department. In cases in which OIT finds reasonable cause to believe that a child has died as a result of abuse or where the death occurred under suspicious or unknown circumstances, OIT shall notify the appropriate law enforcement agency.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005 & 419B.005 - 419B.050

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0870

Office of Investigations and Training Screening Decision Time Frames

(1) When the information received constitutes a report of abuse in which a child may be unsafe, OIT shall interview the child, conduct a site visit, or coordinate with CCP staff to assure that the child is safe within 24 hours after the report is received. If OIT plans to interview the child, OIT

must notify the child's parent or legal guardian, unless notification is prohibited by law or court order or would compromise the child's safety or a criminal investigation.

(2) When it has not been reported that the child is unsafe and there are no other indicators the child is unsafe, OIT may decide to open the case for investigation or to close it at screening. OIT must make the decision to open or close the case within five calendar days from the date the report is received by the Department. The OIT screener may request approval for an extension of time beyond five days if extenuating circumstances exist. Extensions may only be granted by the OIT Director or the Director's designee.

(3) OIT shall screen all reports to identify the nature and cause of the reported abuse.

(a) In all cases, the screener shall evaluate whether the child is safe or unsafe, assess the need for protective action, request that protective action be taken and necessary services provided, and assess the need for further investigation.

(b) In conducting the screening process, OIT may:

(A) Coordinate in-person or by telephone with any CCP staff authorized to take protective action on behalf of the child;

(B) Conduct a site visit at the CCP;

(C) Interview the child or other witnesses;

(i) Prior to interviewing a child victim or child witness, OIT shall give notice of its intent to interview to the child's legal guardian, unless notice is prohibited by law or court order, or would compromise the child's safety or a criminal investigation.

(ii) If OIT determines contact with the child should occur at the child's school, OIT shall comply with the requirements of ORS 419B.045.

(D) Gather and secure physical evidence as necessary;

(E) Take photographs of the child and obtain a medical assessment, as necessary, consistent with OAR 407-045-0880(2)(d) and (e) of this rule;

(F) Take photographs of the facility as necessary or appropriate; and

(G) Receive, review, or copy records pertaining to the child or the incident, including but not limited to incident reports, evaluations, treatment or support plans, treatment notes or progress records, or other documents concerning the welfare of the child.

(4) If OIT decides the information received does not constitute a report of child abuse or neglect as defined in these rules, the report shall be closed at screening. If the report is closed at screening, the screener shall document the information supporting the decision to close. If the child is in the legal custody of the Department, OIT shall notify the child's assigned caseworker of the decision to close the case. If the child has been placed in the CCP by OYA, OIT shall notify OYA. OIT shall notify the CCP and the individual who made the report that the report has been closed. All notices of the decision to close shall be made within three days of the decision.

(5) If, after screening, OIT determines that the information constitutes a report of child abuse or neglect under these rules, it shall open the case for investigation. If OIT decides to investigate, OIT shall immediately notify the child's legal guardian, unless notification is prohibited by law or by court order, or could compromise the child's safety or a criminal investigation. OIT shall also notify the child's caseworker if the child is in the legal custody of the Department and shall notify OYA or the child's tribe, as applicable.

(6) Whenever an OIT investigator takes photographs of physical injuries to a child who is in the custody of the Department, the investigator shall promptly forward copies of the photographs to the CAF caseworker assigned to the child. When conducting screenings or investigations in foster home settings, the investigator shall ascertain whether any other children living in the foster home are in the custody of the Department and if so, shall notify each child's caseworker that a report of abuse or neglect in the foster home is being investigated or screened, and the nature of the investigation.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005, 419B.015, 419B.017 & 419B.020

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0880

OIT Investigative Process in Cases Opened for Investigation

(1) OIT shall conduct thorough and unbiased investigations of abuse allegations.

(2) In conducting abuse investigations, the OIT investigator shall:

(a) Make in-person contact with the child;

(b) Interview the child, any witnesses, the accused person, and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances;

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(c) Review all relevant and material evidence;

(d) Take photographs as appropriate or necessary. If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of abuse, the investigator must immediately photograph or have photographed the suspicious physical injury, pursuant to ORS 418.747; and

(e) If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of abuse, the investigator must, pursuant to ORS 418.747, ensure that a designated medical professional conducts a medical assessment within 48 hours of the observation, or sooner if dictated by the child's medical needs. If a designated medical professional is not available, the investigator must ensure that an available physician conducts the medical assessment. The investigator must document the efforts made to locate the designated medical professional.

(3) A person accused of abuse may have a peer consultant present during the OIT interview. Any individual providing peer support shall be obligated to maintain the confidentiality of information declared to be confidential under state or federal law. Peer supporters shall not be involved in the investigation as witnesses or potential witnesses. CCP certification or human resources staff shall not serve as peer supporters. An accused person wishing to have a peer supporter present during the interview shall notify the OIT investigator in advance of the scheduled interview and shall provide the investigator with the peer's name and job title.

(4) When a law enforcement agency is conducting an investigation of the alleged abuse, the OIT investigator shall cooperate with the law enforcement agency. When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OIT may also conduct its own investigation, as long as it does not interfere with the law enforcement agency investigation, when:

- (a) There is potential for action by a licensing agency;
- (b) Timely investigation by law enforcement is not likely; or
- (c) When the law enforcement agency does not complete a criminal investigation.

(5) During the investigation, if the investigator knows or has reason to believe the child is an Indian child, the investigator must give notice to the child's tribe within 24 hours that an investigation is being conducted, if the tribe has not already been notified.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.747, 419B.045 & 419B.005-419B.050

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0890

Abuse Investigation and Protective Services Report

(1) When the investigation is complete, OIT shall issue a final decision stating whether the allegation is substantiated, not substantiated, or inconclusive, and shall prepare a written report which must include:

(a) A description of the allegation being investigated, including the date, location and time;

(b) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;

(c) A summary of findings and conclusion concerning the allegation of abuse;

(d) A specific finding of substantiated, not substantiated, or inconclusive;

(e) A list of protective services provided to the child at the date of the report;

(f) A plan of action necessary to prevent further abuse of the child;

(g) Any additional corrective action required by the CCP and deadlines for completing the action;

(h) A list of any notices made to licensing or certifying agencies; and

(i) The name and title of the individual completing the report.

(2) The report must be completed within 30 business days from the date the case was opened for investigation. The OIT Director or designee may authorize an extension of time for good cause shown.

(3) The report and underlying investigatory documents are confidential and not available for public inspection. Except as provided in ORS 419B.035, names of witnesses and the alleged abuse victim are confidential unless the provisions of ORS 419B.035(1)(h) and (2)(a) apply. The names and identifying information about a reporter are confidential and may not be disclosed. Investigatory documents, including portions of the abuse investigation and protective services report that contain "individually identifiable health information," as that term is defined in ORS 192.519 and 45 CFR 160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160

and 164, and ORS 192.520 and 179.505 to 179.509. Disclosure of substance abuse treatment records are governed by 42 U.S.C. 290dd-2 and 42 CFR Part 2. The Department shall make otherwise confidential records available to individuals identified in ORS 419B.035(1), and may release records if permitted by ORS 419B.035(3) and other federal and state confidentiality laws.

(4) Except as provided in section (3) of this rule, the Department shall make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities, and to any public agency providing protective services for the child.

(5) Subject to ORS 419B.035(3), the Department may make the protective services report or relevant materials, in redacted form, available to the CCP, any public agency that licenses or certifies the individuals working in a CCP, or to any person who was alleged to have abused or neglected the child. The Department may not disclose confidential information which is prohibited by state or federal law.

(6) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not re-disclose the confidential information to unauthorized individuals or entities, if disclosure is prohibited by state or federal law.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 409.225, 418.015, 419B.005-050 & 419B.035

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0900

Right to Request Review of a Substantiated Finding of Abuse

(1) When OIT has substantiated that abuse of a child has occurred, the person against whom the finding has been made, or a CCP against whom the finding has been made, has the right to request an administrative review of the OIT decision following the procedure set forth in OAR 407-045-0940.

(2) When OIT issues a substantiated abuse report, OIT shall also include written notice of the right to request an administrative review.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 419B.010 & 419.370

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0910

Providing Notice of an OIT Substantiation

OIT must deliver a notice of an OIT substantiation of abuse or neglect to the person identified as the person substantiated in the OIT report or to a substantiated CCP. The notice must be delivered:

(1) By certified mail, restricted delivery, return receipt requested to the last known address of the person or CCP; or

(2) By hand delivery to the person or CCP. If hand delivered, the notice must be addressed to the person or to the OIT contact on record for a CCP and a copy of the notice must be signed and dated by the person or CCP representative acknowledging receipt and also signed by the person delivering the notice.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0920

Claim of Lack of Notice

(1) If a person or CCP believes they are entitled to a notice of OIT substantiation but has not received one, the person or CCP may contact OIT to inquire about a review of the disposition.

(2) OIT must determine whether a notice of OIT substantiation was delivered to the person or CCP or if the person or CCP refused delivery of the notice, as evidenced by the returned receipt.

(3) If a notice was delivered to the person or CCP or if the person or CCP refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review has expired, OIT must:

(a) Prepare and deliver a notice of waived rights for review; or

(b) Inform the person or CCP by telephone of the information required in the notice of waived rights for review. OIT must document the telephone call.

(4) If no return receipt exists or if it appears that notice was not properly provided, OIT must deliver a notice of OIT substantiation as provided in these rules.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

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407-045-0930

Information Included in the Notice of an OIT Substantiation

The notice of an OIT substantiation must include the following:

- (1) The case number assigned to the investigation that resulted in the OIT substantiation;
- (2) The full name of the person or CCP who has been identified as responsible for the child abuse as recorded in the OIT report;
- (3) A statement that the OIT investigation resulted in a substantiation, including a description of the type of child abuse or neglect identified;
- (4) A description of the OIT investigation, including a summary of findings and conclusions;
- (5) A statement that the person or CCP has a right to request a review;
- (6) Instructions for making a request for review, including the requirement that the person or CCP provide a full explanation why the person believes the OIT substantiation is wrong;
- (7) A statement that the Department may not review an OIT substantiation if a legal proceeding is pending and that the person or CCP may request a review within 30 calendar days of the resolution of the pending legal proceeding unless the proceeding results in a legal finding that is consistent with the OIT substantiation;
- (8) A statement that the person waives the right to request a review if the request for review is not received by OIT within 30 calendar days from the date of the notice of OIT substantiation, as documented by a returned receipt.
- (9) A statement that the OSRC shall consider relevant documentary information, including the OIT report and accompanying exhibits, and information submitted with the request for review by the person or CCP requesting review.
- (10) A statement that the OSRC may not re-interview the victim; interview or meet with the person or CCP, with others associated with the person or CCP, or with others mentioned in the report; or conduct a field assessment of the allegation of child abuse; and

(11) A statement that OIT shall send the person or CCP a notice of OSRC decision within 60 calendar days of receiving a request for review.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0940

Requesting Review of an OIT Substantiation

A person or CCP requesting a review must use information contained in the notice of OIT substantiation to prepare a written request for review. The written request for review must be received by OIT within 30 calendar days of the receipt of the notice of OIT substantiation. If the request is submitted by mail, it must be postmarked within 30 calendar days. The request must include the following:

- (1) Date the request for review is written;
- (2) Case number found on the notice of OIT substantiation;
- (3) Full name of the person or CCP;
- (4) The person's or CCP's current name (if it has changed from the name noted in section (3) of this rule);
- (5) A full explanation, responsive to the information provided in the Department's notice, explaining why the person or CCP believes the OIT substantiation is wrong and any additional information and documents the person or CCP wants considered during the review;
- (6) The person's or CCP's current street address and telephone number; and
- (7) The person's signature or the signature of a CCP employee authorized to sign on behalf of the organization.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0950

When Legal Findings Precludes Right to Request a Review and Providing Notice of Legal Proceeding

- (1) If OIT has knowledge of a pending legal proceeding, the OSRC may not review the disposition until the legal proceeding is completed.
- (2) If OIT has knowledge of a pending legal proceeding, OIT must prepare and deliver a notice of legal proceeding within 30 calendar days after receipt of a request for review informing the person or CCP that the Department may not review the substantiation until the legal proceeding is completed and may not take further action on the request.
- (3) If the completed legal proceeding results in a legal finding consistent with the OIT substantiation, the Department may not conduct a review.

In that case, OIT shall provide a notice of legal finding to the person or CCP.

(4) If the completed legal proceeding results in a legal finding which is inconsistent with the OIT substantiation, the person or CCP may, at the conclusion of the legal proceeding, re-submit a request for review within 30 calendar days from the date of resolution of legal proceeding.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0960

OIT Responsibilities Related to Notices and Reviews

(1) If a person or CCP asks to review Department records for the purpose of reviewing an OIT substantiation, state and federal confidentiality laws, including OAR 413-010-0000 to 413-010-0075 and 413-350-0000 to 413-350-0090, govern the inspection and copying of records.

(2) OIT must maintain records to demonstrate the following, when applicable:

- (a) Whether the Department delivered a notice of OIT substantiation;
 - (b) Whether the notice of OIT substantiation was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received; and
 - (c) The date a request for review was received by OIT.
- (3) The OIT Director or designee must maintain a comprehensive record of completed OIT substantiation reviews.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

407-045-0970

OSRC Review

(1) The OSRC shall conduct a review and issue a notice of OSRC decision within 60 calendar days from the date OIT receives a request for review.

(2) The OSRC shall operate as follows:

(a) The OSRC shall consider relevant documentary information contained in the OIT investigation file, investigative report and exhibits, and information provided by the person.

(b) The OSRC may not re-interview the victim; interview or meet with the person or CCP staff, with others associated with the person or CCP, or with others mentioned in the report; or conduct a field assessment of the allegation of child abuse or neglect.

(c) All OSRC decisions must be decided by majority vote of the three participating committee members, all of whom must be present.

(d) The OSRC shall make a determination as to:

(A) Whether there is reasonable cause to believe that child abuse or neglect occurred; and

(B) Whether there is reasonable cause to believe that the person or CCP is responsible for the child abuse or neglect.

(e) The OSRC shall decide to either uphold the OIT substantiation, or change that conclusion to not substantiated or inconclusive.

(3) Within 60 calendar days from the date the OSRC receives the request for review, the OSRC shall prepare and send to the requestor by certified mail or restricted delivery, with return receipt requested, a notice of OSRC decision that includes the following:

(a) Whether there is reasonable cause to believe that child abuse occurred;

(b) Whether there is reasonable cause to believe that the person or CCP was responsible for the child abuse;

(c) Whether the OSRC is changing the OIT substantiation;

(d) If the OIT substantiation is changed, whether the changed conclusion is being changed to "not substantiated" or "inconclusive;" and

(e) A summary of the information used by the OSRC and its reasoning in reaching its decision.

(4) OSRC shall send the notice of OSRC decision to the person or CCP, CAF, the OIT investigator who conducted the investigation, applicable public agencies, other entities or individuals who received notice of the original substantiation, and the OIT Director.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHSD 12-2007(Temp), f. & cert. ef.12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 8-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10

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407-045-0980

Retaliation Prohibited

No individual, including a child who reports suspected abuse, shall be subject to retaliatory action by a CCP.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005

Hist.: DHS 12-2007(Temp), f. & cert. ef. 12-3-07 thru 5-30-08; DHS 4-2008, f. & cert. ef. 5-30-08; DHS 5-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Definition Correction in Abuse Reporting and Protective Services in Children's Care Provider (CCP) Settings.

Adm. Order No.: DHS 6-2010(Temp)

Filed with Sec. of State: 7-12-2010

Certified to be Effective: 7-12-10 thru 1-8-11

Notice Publication Date:

Rules Amended: 407-045-0820

Subject: This rule is being temporarily amended to correct a scrivener's error in the definition of the term "Not Substantiated" in OAR 407-045-0820(15). The current rule (effective 7/1/10) states the standard of evidence as no reasonable cause to believe abuse occurred based on the available evidence. The correct legal standard is a preponderance of the evidence establishes the alleged abuse did not occur.

Temporary rules are available on the DHS website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>

For hardcopy requests, call: (503) 947-5250.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-045-0820

Definitions

The following definitions apply to OAR 407-045-0800 through 407-045-0980:

(1) "Abuse" includes but is not limited to:

(a) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(b) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(c) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration, and incest, as defined in ORS chapter 163.

(d) Sexual abuse, as defined in ORS chapter 163.

(e) Sexual exploitation which includes but is not limited to:

(A) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces, or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording, or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670;

(B) Sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; or

(C) Allowing, permitting, encouraging, or hiring a child to engage in prostitution, as defined in ORS chapter 167.

(f) Negligent treatment or maltreatment of a child which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare.

(g) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(h) Buying or selling an individual under 18 years of age, as described in ORS 163.537.

(i) Permitting an individual under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(j) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(2) "Child" means an unmarried individual under 18 years of age.

(3) "Children's care provider (CCP)" means a 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.

(4) "Day treatment program" means a licensed CCP that provides day treatment services.

(5) "Day treatment services" means comprehensive, interdisciplinary, nonresidential, community based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to children with emotional disturbances.

(6) "Department" means the Department of Human Services.

(7) "Designated medical professional" means a medical professional as defined in ORS 418.747 who has been trained to conduct child abuse medical assessments pursuant to ORS 418.782.

(8) "Foster care agency" means a licensed child-caring agency that offers to place children by taking physical custody of and then placing the children in homes certified by that agency.

(9) "Inconclusive" means a preponderance of evidence is not available to determine whether the alleged abuse did or did not occur. Evidence may be inconclusive because relevant witnesses, documents, or records are unavailable, or because there is conflicting or inconsistent information from witnesses, documents, or records, with the result that at the conclusion of the investigation there is insufficient evidence to support a "substantiated" or a "not substantiated" conclusion.

(10) "Legal finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of an OIT substantiation.

(11) "Likely to endanger the health or welfare of the child" means negligent treatment or maltreatment that is likely to result in harm to the child, based on the available facts, and on the individual child's particular physical, emotional, behavioral, or mental health needs, circumstances, or vulnerabilities.

(12) "Maltreatment" means any action toward a child which carries a risk of harm to the child's physical, emotional, behavioral, or mental health or welfare. Examples of staff behaviors that must be reported as potential abuse by maltreatment include but are not limited to the willful infliction of pain or injury (e.g. hitting, kicking, pushing, arm twisting, head twisting, etc.); exposure to domestic violence; inappropriate or excessive force during a containment hold or restraint; or other physical contact with the child inconsistent with prescribed treatment or care. All injuries during a restraint or hold must be reported, including minor injuries. Other behaviors that must be reported include the use of derogatory names, phrases, profanity, ridicule, harassment, intimidation, or coercion. While such behaviors do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the actions were likely to endanger the child's health or welfare.

(13) "Mandatory reporter" means an individual or entity having a duty to report as defined in ORS 419B.005 to 419B.050.

(14) "Negligent treatment" means failure to perform duties or failure to take action required to protect the child's health or welfare. Examples of staff behaviors that must be reported as potential abuse by negligent treatment include but are not limited to failure to supervise a child or failure to intervene when a child needs assistance or care. While such failures do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the failures were likely to endanger the child's health or welfare.

(15) "Not substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.

(16) "OIT" means the Department's Office of Investigations and Training.

(17) "OIT investigator" means an employee of the Department's OIT who is authorized and trained to investigate reports of child abuse or neglect under these rules.

(18) "OIT Substantiation Review Committee (OSRC)" means a group of three Department employees selected by the Department's Deputy Director or designee, none of whom was involved in any part of the investigation that resulted in the OIT substantiation under review. The committee must consist of Department employees who are knowledgeable about the dynamics of child abuse and neglect, including the assessment or investigation of child abuse and neglect, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings.

(19) "Outdoor youth program" means a licensed program that provides, in an outdoor living setting, services to youth who are enrolled in the program because they have behavioral or mental problems, or problems with abuse of alcohol or drugs. "Outdoor youth program" does not include any program, facility, or activity operated by a governmental entity, operat-

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ed or affiliated with the Oregon Youth Conservation Corps, or licensed by the Department as a child-caring agency under other Department authority. It does not include outdoor activities for youth designed to be primarily recreational such as YMCA, Outward Bound, Boy Scouts, Girl Scouts, Campfire, church groups, or other similar activities.

(20) "Person" means the person OIT has reasonable cause to believe is responsible for child abuse in a substantiated OIT report, and about whom a substantiated finding has been made.

(21) "Protective action" means a set of services or activities undertaken to address and meet a child's safety needs after a report of abuse has been received by OIT.

(22) "Residential care agency" means a licensed child-caring agency that provides services to children 24 hours a day.

(23) "Substantiated" means that a preponderance of evidence establishes the alleged abuse occurred.

(24) "Suspicious physical injury" is defined in ORS 419B.005 and includes but is not limited to burns or scalds; extensive bruising or abrasions on any part of the body; bruising, swelling, or abrasions on the head, neck, or face; fractures of any bone in a child under the age of three; multiple fractures in a child of any age; dislocations, soft tissue swelling, or moderate to severe cuts; loss of the ability to walk or move normally according to the child's developmental ability; unconsciousness or difficulty maintaining consciousness; multiple injuries of different types; injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or any other injury that threatens the physical well-being of the child.

(25) "Therapeutic boarding school" means a licensed organization or a program in an organization that:

- (a) Is primarily a school and not a residential care agency;
- (b) Provides educational services and care to children 24 hours a day;

and

(c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or ensuring that children receive therapeutic services.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.189, 418.205 - 418.327, 418.747, 419B.005 - 419B.050 & 419B.328

Hist.: DHSD 12-2007(Temp), f. & cert. ef. 12-3-07 thru 5-30-08; DHSD 4-2008, f. & cert. ef. 5-30-08; DHSD 5-2010, f. 6-30-10, cert. ef. 7-1-10; DHSD 6-2010(Temp), f. & cert. ef. 7-12-10 thru 1-8-11

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**Department of Human Services,
Children, Adults and Families Division:
Child Welfare Programs
Chapter 413**

Rule Caption: Changing OARs affecting Child Welfare programs.
Adm. Order No.: CWP 7-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10

Notice Publication Date: 4-1-2010

Rules Amended: 413-070-0400, 413-070-0410, 413-070-0430, 413-070-0450, 413-070-0470, 413-070-0480, 413-070-0490

Rules Repealed: 413-070-0440

Subject: OAR 413-070-0400 about the purpose of the Department's rules (OAR 413-070-0400 to 413-070-0490) regarding the prescribing and administering of psychotropic medications to a child or young adult placed with a substitute caregiver; OAR 413-070-0410 about the definitions used in the Department's rules regarding the prescribing and administering of psychotropic medications to a child or young adult placed with a substitute caregiver; OAR 413-070-0430 about the Department's retention of the medical and mental health records of children and young adults in substitute care, the types of consents and notifications required before a new psychotropic medication prescription can be filled, the assessment required before administering of a new psychotropic medication prescription, and the circumstances under which the Department conducts reviews of psychotropic medication administration; OAR 413-070-0450 about when the Department must disclose to parents the medical or mental health care obtained by a child 14 years of age or older or a young adult; OAR 413-070-0470 about the responsibilities, including notification and record keeping requirements, of the substitute caregiver when a child or young adult obtains, fills, or is administered a psychotropic medication; OAR 413-070-0480 about

the requirements that apply to Department notices concerning a child or young adult's psychotropic medications, including when notice is required, timing, and to whom notice must be provided; and OAR 413-070-0490 about the content requirements for a notice provided under OAR 413-070-0480 are being amended; and OAR 413-070-0440 about who could authorize the administration of a psychotropic medication prescription in an emergency situation is being repealed in response to recent legislation (HB 3114 (2009)) to clarify the Department's rules regarding the prescribing and administering of psychotropic medications to a child or young adult placed with a substitute caregiver (OAR 413-070-0400 to 413-070-0490), accurately reflect Department policy, include the definitions for key terms used in these rules, and reflect current Department terminology.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-070-0400

Purpose

These rules, OAR 413-070-0400 to 413-070-0490, describe the responsibilities of the substitute caregiver and the Department when a child or young adult placed in substitute care by the Department is prescribed or administered psychotropic medication.

Stat. Auth.: ORS 109.675, 418.005, 418.517

Stats. Implemented: ORS 109.675, 418.005, 418.517

Hist.: SCF 3-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10

413-070-0410

Definitions

The following definitions apply to OAR 413-070-0400 to 413-070-0490:

(1) "Antipsychotic medication" means a medication, specified in class 28:16:08 by the American Hospital Formulary Service, used to treat psychosis and other conditions.

(2) "Assessment" means the determination of a child or young adult's need for mental health services through interviewing the child or young adult and obtaining all pertinent medical and psychosocial history information from the individual, family, and collateral sources. The assessment:

- (a) Addresses the current complaint or condition presented by the child or young adult;
- (b) Determines a diagnosis; and
- (c) Provides treatment direction and individualized services and supports.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Designee" means a person whom the designator directly and immediately supervises or a person with equal or greater management responsibility than the designator.

(6) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "Licensed medical professional" means an individual who meets the criteria of both of the following subsections:

(a) The individual holds at least one of the following valid licensures or certifications:

(A) Physician licensed to practice in the State of 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 the State of Oregon.

(b) Is an individual whose training, experience, and competence demonstrate expertise in children's mental health, the ability to conduct a mental health assessment, and the ability to provide psychotropic medication management for children and young adults.

(8) "Medically accepted indication" means any use for a covered outpatient drug that is approved under the Federal Food, Drug and Cosmetic Act, recommended by the Drug Use Review Board, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia:

(a) American Hospital Formulary Services drug information;

(b) United States Pharmacopoeia drug information or any successor publication;

(c) The DRUGDEX Information System; or

(d) Peer-reviewed medical literature.

(9) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of

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a licensed private child-caring agency approved to provide care for a child or young adult.

(10) "Psychotropic medication" means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including, but not limited to antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(11) "Qualified mental health professional" means an individual who meets the requirements of both of the following subsections:

(a) Holds at least one of the following educational degrees:

- (A) Graduate degree in psychology;
- (B) Bachelor's degree in nursing and licensed by the State of Oregon;
- (C) Graduate degree in social work;
- (D) Graduate degree in a behavioral science field;
- (E) Graduate degree in recreational, art, or music therapy; or
- (F) Bachelor's degree in occupational therapy and is licensed by the State of Oregon.

(b) Whose education and experience demonstrates the competencies to:

- (A) Identify precipitating events;
- (B) Gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts;
- (C) Assess family, social, and work relationships;
- (D) Conduct a mental status examination;
- (E) Document a multiaxial DSM diagnosis;
- (F) Develop and supervise a treatment plan;
- (G) Conduct a mental health assessment; and
- (H) Provide individual, family, or group therapy within the scope of his or her practice.

(12) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(13) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(14) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(15) "Urgent medical need" means the onset of psychiatric symptoms requiring professional attention within 48 hours to prevent a serious deterioration in a child or young adult's mental or physical condition.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 109.675, 418.005, 418.517

Stats. Implemented: ORS 109.675, 418.005, 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10

413-070-0430

Department Records, Medication Review, and Documentation Requirements

(1) The Department must keep the medical and mental health records of any child or young adult in substitute care. As used in this section, "medical and mental health care records" includes a child or young adult's records of medical and mental health care, including but not limited to the names of former and current health providers, medical services and diagnoses, evaluations, immunizations, and prescribed medications.

(2) The caseworker must support timely exchange of medical and mental health care information for a child or young adult in substitute care unless:

(a) A child or young adult has the authority to consent to his or her own health and mental health care; or

(b) The child or young adult's parent or legal guardian retains authority to consent to health care decisions through a Voluntary Custody Agreement or Voluntary Placement Agreement.

(3) The caseworker must:

(a) Provide records of previous mental health assessments and assessment updates, including multi-axial DSM diagnosis and treatment recommendations, and progress records from mental health treatment services to the licensed medical professional prior to the medical appointment or no later than the time at which the licensed medical professional examines the child when a child or young adult may be receiving a prescription for a psychotropic medication.

(b) Document and timely inform the substitute caregiver of the child or young adult's known health information, including information regarding any prescribed and administered psychotropic medication:

(A) At the time of placement; and

(B) When new or updated health information becomes known to the Department.

(4) To keep accurate medical records and documentation for a child or young adult's medical and mental health history record, the caseworker must:

(a) Retain copies of all medical and mental health records received by the Department in the medical section of the case file of the child or young adult in substitute care.

(b) Document and update records of known health conditions, services, and supports of the child or young adult in substitute care when developing the case plan and at each case plan review.

(c) Receive and review monthly the medication log of the child or young adult in substitute care and file a copy in the medical section of the case record of the child or young adult.

(d) Document the medical information of the child or young adult in the Department's information system.

(5) The Department must inform the substitute caregiver of the child or young adult that written consent, as set forth in the following subsections, is required prior to filling a prescription for a new psychotropic medication unless there is an urgent medical need, in which case prior written consent is not required.

(a) Unless an exception in subsection (d) of this section applies, the Child Welfare Program Manager or designee must provide written consent prior to the administration of any new prescription of psychotropic medication to a child or young adult in substitute care when the requirements of at least one of the following paragraphs applies:

(A) The Department is the legal guardian of the child;

(B) Parental rights have been terminated and the court has ordered permanent commitment of the child and placed the child in legal custody and guardianship of the Department; or

(C) A child's parents have signed a Release or Surrender Agreement giving the Department guardianship and control over the child.

(b) When the authority to provide consent to psychotropic medication is not given to the Department in the Voluntary Placement Agreement or Voluntary Custody Agreement, the Department must obtain the written consent of a child's parent or legal guardian for the administration of psychotropic medication.

(c) A child, 14 years of age or older or a young adult may provide written consent for psychotropic medication under ORS 109.675.

(d) Written consent of the Child Welfare Program Manager or designee is not required prior to the administration of any new prescription of psychotropic medication to a child or young adult in substitute care when the requirements of at least one of the following paragraphs applies:

(A) A change in the delivery system of a previously prescribed medication;

(B) A change in the dosage of a previously prescribed medication;

(C) A change in medication within the same drug classification;

(D) A one-time medication given prior to a medical procedure; or

(E) An anti-epileptic medication prescribed for a seizure disorder.

(6) After the caseworker has obtained the written consent for psychotropic medication required under section (5) of this rule, the caseworker must:

(a) Complete the notifications required under OAR 413-070-0480 and 413-070-0490.

(b) Ensure a report has been made to the prescribing licensed medical professional when the condition of the child or young adult in substitute care is not improving, is deteriorating, or when the child or young adult, caseworker, substitute caregiver, or other individual has observed suspected side-effects of the medication.

(c) Request and receive updated health information about the child or young adult in substitute care and the effects of the prescribed psychotropic medication therapy from the substitute caregiver during the 30 day contact with the substitute caregiver required under OAR 413-080-0059.

(7) Prior to administration of a new prescription for more than one psychotropic medication or any antipsychotic medication, the Department must ensure a child or young adult in substitute care has received an assessment from a qualified mental health professional or licensed medical professional unless:

(a) A medication was prescribed for an urgent need; or

(b) The prescription is described in paragraphs (5)(d)(A) to (E) of this rule.

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(8) The assessment required under section (7) of this rule either must:

- (a) Have been completed within the three months prior to the prescription for psychotropic medication; or

- (b) Be an update of a prior assessment, which focuses on a new or acute problem, and information from the assessment must be communicated to the licensed medical professional prior to the issuance of a prescription for psychotropic medication.

(9) The Department must ensure the requirements of both of the following subsections are met:

- (a) An annual review of psychotropic medications, by an individual other than the prescriber when:

- (A) A child or young adult has more than two prescriptions for psychotropic medications; or

- (B) A child is under six years of age.

- (b) The annual review required under subsection (a) of this section must be conducted by one of the following:

- (A) A licensed medical professional;

- (B) A qualified mental health professional with the authority to prescribe drugs; or

- (C) A licensed pharmacist with the Drug Use Review Program under OAR 410-121-0100.

Stat. Auth.: ORS 109.675, 418.005, 418.517

Stats. Implemented: ORS 109.675, 418.005, 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10

413-070-0450

Disclosure Requirements for the Department Regarding a Child 14 Years of Age and Older and a Young Adult in Substitute Care

Pursuant to ORS 109.675, a child 14 years of age or older or a young adult in substitute care may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder, or a chemical dependency, excluding methadone maintenance, by a physician, licensed psychologist, nurse practitioner, licensed clinical social worker, or a community mental health and developmental disabilities program established and operated pursuant to ORS 430.620. However, when a child 14 years of age or older or a young adult is in substitute care, and the substitute caregiver or the Department has knowledge of that prescription, the notification requirements of OAR 413-070-0470, 413-070-0480, and 413-070-0490 apply.

Stat. Auth.: ORS 109.675, 418.005, 418.517

Stats. Implemented: ORS 109.675, 418.005, 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10

413-070-0470

Substitute Caregiver Responsibilities

(1) The substitute caregiver must:

- (a) Notify the Department within one business day after receiving a new prescription or knowledge of a new prescription for psychotropic medication for a child or young adult; and

- (b) Obtain consent from the Department prior to filling a prescription for and administering a new psychotropic medication.

(2) The substitute caregiver must provide written or verbal notification to the caseworker or caseworker's supervisor within one business day when a licensed medical professional prescribes a change in dosage, suspension, or discontinuation of the current psychotropic medication.

(3) The substitute caregiver must keep current medical and mental health care records and medication logs of a child or young adult in the care or custody of the Department. The records must include:

- (a) Medical and mental health appointments for the child or young adult in substitute care.

- (b) Medical and mental health appointment follow-up reports provided to the substitute caregiver.

- (c) Any record of any immunization obtained while in the care of the substitute caregiver.

- (d) A record of all prescribed medications administered to the child or young adult in substitute care.

(4) A substitute caregiver certified by the Department must keep a current medication log on a form approved by the Department. A provider must keep a current medication log either on the form approved by the Department or on a form provided by the private child-caring agency. The medication log record must include all medications administered to the child or young adult in substitute care and must include:

- (a) The name of the child or young adult in substitute care.

- (b) The brand or generic name of the medication, including the prescribed dosage and prescribed dosage administration schedule.

- (c) Times and dates of administration or monitored self-administration of the medication.

- (d) The name or initials of the substitute caregiver administering the medication or monitoring the self-administration.

(5) The substitute caregiver must provide completed medication logs and any medication records obtained during medical visits and records of appointments to the Department at the end of each month. This must include logs of all medication administered to the child or young adult at school or in settings other than the home of the substitute caregiver.

(6) The substitute caregiver must keep all psychotropic medications properly stored and must:

- (a) Ensure the psychotropic medication specifies the dosage and prescribed dosage administration schedule of the licensed medical professional for the psychotropic medication; and

- (b) Ensure the psychotropic medication is kept in locked storage and stored as prescribed. Psychotropic medication requiring refrigeration must be kept under refrigeration in a locked box.

(7) The substitute caregiver may not discontinue, change, or otherwise alter the prescribed administration of a psychotropic medication for a child or young adult in substitute care without direction from the licensed medical professional.

(8) The substitute 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 medical professional and must notify the Department when any such alternative medication is directed.

Stat. Auth.: ORS 109.675, 418.005, 418.517

Stats. Implemented: ORS 109.675, 418.005, 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10

413-070-0480

Notification Timelines for Psychotropic Medication Therapy

(1) The Department must provide written notification to the parties identified in section (2) of this rule within a timely manner, not to exceed ten business days of:

- (a) The Department receiving notice that a psychotropic medication has been prescribed for a child or young adult in substitute care; or

- (b) Either of the following changes occur in the treatment of a child or young adult in substitute care:

- (A) The prescribed dosage of a psychotropic medication; or

- (B) Discontinuation of existing psychotropic medication therapy.

(2) When a child or young adult is in substitute care, written notification is provided to:

- (a) The parent or legal guardian unless a parent has relinquished parental rights or had parental rights terminated;

- (b) The attorney of the parent or legal guardian;

- (c) The attorney of the child or young adult;

- (d) The court appointed special advocate of the child or young adult, if one has been appointed;

- (e) Any other legal parties to the case; and

- (f) The substitute caregiver.

Stat. Auth.: ORS 109.675, 418.005, 418.517

Stats. Implemented: ORS 109.675, 418.005, 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10

413-070-0490

Notification Content for Psychotropic Medication Therapy

The notification described in OAR 413-070-0480 must contain:

- (1) The name and contact information of the prescribing licensed medical professional;

- (2) The diagnosed condition of the child or young adult for which the medication was prescribed;

- (3) The name of the prescribed psychotropic medication;

- (4) The prescribed dosage;

- (5) The dosage recommended pursuant to a medically accepted indication;

- (6) The reason the medication was prescribed;

- (7) The expected benefit of the medication;

- (8) The side-effects of the medication; and

- (9) Notice of the right to petition the juvenile court for a hearing if there is an objection to the use of the prescribed medication or prescribed dosage.

Stat. Auth.: ORS 109.675, 418.005, 418.517

Stats. Implemented: ORS 109.675, 418.005, 418.517

Hist.: SCF 5-1995, f. & cert. ef. 9-15-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 8-2007, f. & cert. ef. 5-1-07; CWP 7-2010, f. & cert. ef. 6-30-10

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Subject: OAR 413-120-0900 about the purpose of the Department's rules (OAR 413-120-0900 to 413-120-0980) when an adoption case is subject to the requirements of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Convention) and the Intercountry Adoption Act of 2000, 42 USC 14901 to 14954 or when the Department will consider and pursue special immigrant juvenile status for a child; OAR 413-120-0905 about the definitions used in these rules (OAR 413-120-0900 to 413-120-0980); OAR 413-120-0910 about the Convention adoption case information the Department must provide to the U. S. State Department; OAR 413-120-0920 about incoming Convention adoptions (the adoption of a child immigrating to the United States); OAR 413-120-0925 about outgoing Convention adoptions (the adoption of a child emigrating from the United States); OAR 413-120-0930 about the Department's responsibilities for transition, travel, placement, and registration during an outgoing Convention adoption; OAR 413-120-0940 about when the Department may consent to an outgoing Convention adoption and the Department's responsibilities for post-placement supervision during an outgoing Convention adoption; OAR 413-120-0945 about the Department's finalization and post-finalization responsibilities during an outgoing Convention adoption; OAR 413-120-0950 about a child's eligibility for adoption assistance benefits when the child is the subject of a Convention adoption; OAR 413-120-0960 about the information the Department must provide to the prospective adoptive parents in an outgoing Convention adoption; OAR 413-120-0970 about when the Department must obtain a Hague custody declaration and when the Hague custody declaration must accompany the child leaving the country; and OAR 413-120-0980 about when the Department may apply for special immigrant juvenile status (the legal process to obtain lawful permanent resident status for a child who does not have lawful permanent resident status because he or she entered the United States without inspection) for a child in the legal and physical custody of the Department are being adopted in response to recent legislation, Senate Bill 10 (2009) codified as ORS 417.262 and House Bill 3471 (2009) codified as ORS 417.265, to comply with changes in the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and federal law, The Intercountry Adoption Act of 2000 (42 USC 14901 to 14954).

Rules Coordinator: Annette Tesch—(503) 945-6067

413-120-0900

Purpose

These rules, OAR 413-120-0900 to 413-120-0980, describe:

(1) The Department's responsibilities in cases that are subject to the requirements of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Convention) and the Intercountry Adoption Act of 2000, 42 USC 14901 to 14954 (IAA). The Convention and IAA apply to any case where a child who is a habitual resident of one Convention country has been, is being, or will be moved to another Convention country for the purpose of adoption. The Convention and IAA are intended to protect the rights of and prevent abuses against children, birth families, and adoptive parents involved in any adoption that is subject to the Convention and IAA and to ensure that such adoptions are in the best interests of the child.

(2) The duty of the Department to enter into a formal agreement with the foreign authorized entity of the receiving Convention country for an outgoing Convention adoption to assure that the prospective adoptive parents are suitable and willing to adopt the child, support child safety, and assure the provision of needed services during the period of post-placement supervision prior to finalization of the adoption.

(3) When the Department will consider and pursue special immigrant juvenile status for a child who was brought to the United States by a parent or legal guardian not for the purpose of adoption, does not have lawful permanent resident status (entered without inspection), cannot be returned safely to a parent or placed in the child's country of origin, and should remain in the United States pending finalization of a permanent plan other than return to parent.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

413-120-0905

Definitions

The following definitions apply to OAR 413-120-0900 to 413-120-0980

(1) "Adoption" means a legal or administrative process that establishes a permanent legal parent-child relationship between a child and an adult who is not already the child's legal parent and terminates the legal parent-child relationship between the adopted child and any former parent.

(2) "Central authority" means the entity designated as such by a Convention country that is authorized to discharge the duties imposed on Convention countries.

(3) "Central authority functions" means any duty required to be carried out by a central authority or foreign authorized entity under the Convention.

(4) "Convention" means the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoptions, concluded at The Hague, the Netherlands, on May 29, 1993, which went into effect in the United States on April 1, 2008.

(5) "Convention adoption" means an adoption of a child who is a habitual resident in a Convention country by an individual in another Convention country when the child has been, is being, or will be moved between the two Convention countries for the purpose of adoption.

(6) "Convention country" means a country that is a party to the Convention.

(7) "Department" means the Department of Human Services, Child Welfare.

(8) "Foreign authorized entity" means a foreign central authority or an accredited entity authorized by the foreign country to perform central authority functions in Convention adoption cases.

(9) "Hague adoption certificate" means a certificate issued by the Secretary in an outgoing Convention adoption certifying that the child has been adopted in the United States in conformity with the Convention and IAA.

(10) "Hague custody declaration" means a declaration issued by the Secretary in an outgoing Convention adoption declaring that custody of the child for purposes of adoption has been granted in the United States in conformity with the Convention and IAA.

(11) "IAA" means the Intercountry Adoption Act of 2000, Public Law 106-279, 42 USC 14901 to 14954.

(12) "Incoming Convention adoption" means a case in which a child who is a resident of another Convention country has been, is being, or will be moved to the United States for placement and adoption.

(13) "Outgoing Convention adoption" means a case in which a child in the United States has been, is being, or will be moved to another Convention country for placement and adoption.

(14) "Prospective adoptive parents" means the parents, family members, or other people who reside in the residence, or the physical home location of the family, who have been studied and approved by a foreign authorized entity to adopt a child in the legal and physical custody of the Department and with whom the Department has made an official decision to place the child in the family home for the purpose of adoption.

(15) "Receiving Convention country" means a Convention country in which a child who is the subject of an outgoing adoption will be placed for purposes of adoption.

(16) "Relative" has the meaning given that term in OAR 413-070-0063.

(17) "Secretary of State" means the Secretary of the United States Department of State, the central authority for the United States.

(18) "Special immigrant juvenile status" means the legal process to obtain lawful permanent resident status for a child who does not have lawful permanent resident status because he or she entered the United States without inspection.

(19) "U.S. State Department" means the United States Department of State.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

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413-120-0910

Duty to Provide Information to Convention Case Registry

(1) Notwithstanding any other Department rule regarding the disclosure of information related to adoptions, the Department must provide all information to the U. S. State Department that is required for registry reporting. This includes, but is not limited to, information on each of the following actions for a Convention adoption, either incoming or outgoing, pending or finalized by the Department:

- (a) A child immigrating to the United States for the purpose of adoption;
- (b) A child emigrating from the United States for the purpose of adoption;
- (c) Number of disruptions;
- (d) Number of dissolutions; and
- (e) Average length of time to finalization.

(2) The Department must maintain a database of all Oregon, licensed, private agency adoption placements, disruptions, finalizations, and dissolutions. This information must be reported to the U.S. Department of Health and Human Services Administration for Children, Youth, and Families Children's Bureau.

Stat. Auth.: ORS 417.262, 417.265, 418.005
Stats. Implemented: ORS 417.262, 417.265, 418.005
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

413-120-0920

Adoption of a Child Immigrating to the United States (Incoming Convention Adoption)

(1) An incoming Convention adoption can involve a child who:

- (a) Holds or is eligible for dual United States and foreign citizenship; or
- (b) Is undocumented, but the foreign authorized entity of the child's birth country has determined that the Convention applies to the adoption.

(2) The Department will cooperate with each applicable foreign authorized entity and comply with the requirements of the Convention and IAA with respect to each incoming Convention adoption.

Stat. Auth.: ORS 417.262, 417.265, 418.005
Stats. Implemented: ORS 417.262, 417.265, 418.005
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

413-120-0925

Adoption of a Child Emigrating from the United States (Outgoing Convention Adoption)

(1) The Department may pursue an outgoing Convention adoption provided that:

- (a) It is in the best interest of the child;
- (b) The child has not been abducted, sold, or trafficked in connection with the adoption; and
- (c) The prospective adoptive parent:
 - (A) Is a relative;
 - (B) Has been assessed, approved and trained; and
 - (C) Has been determined able and willing to permanently provide for the safety, well-being, and special needs of the child.

(2) An outgoing Convention adoption may involve a child who meets the requirements of one of the following subsections:

- (a) The child is, or is eligible to become, a:
 - (A) United States citizen;
 - (B) Legal United States resident; or
 - (C) Dual United States and foreign citizen.
- (b) The child is undocumented, but the foreign authorized entity of the child's birth country has determined that the Convention applies to the adoption.

(3) Adoption planning for a child that may be the subject of an outgoing Convention adoption must comply with other Department rules, including Child Welfare policies: I-F.2 "Determining the Appropriateness of Adoption as a Permanency Plan for a Child", OAR 413-110-0300 to 413-110-0360; I-E.1.1 "Working with Relatives Toward Placement of Children", OAR 413-070-0060 to 413-070-0087; I-F.6 "Sibling Placement Planning in Adoption", OAR 413-110-0100 to 413-110-0140; I-G.1.5 "Adoption Placement Selection", OAR 413-120-0000 to 413-120-0080; and I-G.3.2 "Post Legal Adoption Services", OAR 413-130-0150 to 413-130-0180.

(4) Before a child may be placed in a prospective adoptive home in another Convention country the Department must meet the requirements of each of the following subsections:

- (a) Make a written determination that the child is eligible for adoption, that an outgoing Convention adoption is in the child's best interests,

and that placement with the prospective adoptive parents is in the best interests of the child.

(b) Complete or obtain a written child background study that includes information about the child's identity; upbringing; adoptability; ethnic, religious, and cultural background; social environment; family history; personal medical history; family medical history; and special needs.

(c) Determine that the prospective adoptive parents meet the definition of relative and document that determination.

(d) Work with the foreign authorized entity in the receiving Convention country to determine whether the prospective adoptive parents are suitable, qualified, and eligible to adopt the child. To do so the Department must meet the requirements in each of following paragraphs:

(A) Provide a copy of the child's background study to the foreign authorized entity in the receiving Convention country.

(B) Obtain from the foreign authorized entity a comprehensive home study on the prospective adoptive parents that is prepared in accordance with the laws of the receiving country; meets the standards established by the Department using the Department's Hague Home Study template; addresses the capacity of the prospective adoptive parents to meet the child's safety, permanency and well-being needs; and includes all of the following:

(i) Information on the prospective adoptive parents, including: identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an inter-country adoption, and the characteristics of a child for whom they would be qualified to care;

(ii) Confirmation that a foreign authorized entity has determined that the prospective adoptive parents are eligible and suitable to adopt and has ensured that the prospective adoptive parents have been counseled as necessary;

(iii) The results of a criminal background check; and

(iv) Information from competent references for the prospective adoptive parents.

(C) Obtain written confirmation from the foreign authorized entity that the prospective adoptive parents have completed a minimum of 10 hours of approved training that includes training on all of the following:

(i) The effects of physical, emotional, and sexual abuse and neglect on a child;

(ii) The effects of drugs and alcohol on a child;

(iii) The effects of relocating a child and transition issues;

(iv) The significance of the birth family, include grief and loss issues;

(v) Openness in adoption;

(vi) Attachment process and attachment difficulties;

(vii) Positive behavior management; and

(viii) The specific needs of the child to be adopted by the prospective adoptive parents.

(D) Provide notice to the foreign authorized entity studying the prospective adoptive family and providing required training to the prospective adoptive parents that the Department does not condone the use of corporal punishment.

(E) Obtain from the foreign authorized entity a written, signed Supervision Agreement using the approved Department form that describes the responsibilities of the Department and foreign authorized entity with regard to the child's placement with the prospective adoptive parents and includes each of the following:

(i) Minimum requirements regarding face-to-face visits with the child, the prospective adoptive parents, other individuals living in the home of the prospective adoptive parents, and other individuals who may have information about the child's adoptive placement.

(ii) Minimum standards for written reports on contacts with the child, prospective adoptive family, other family members, and collateral contacts.

(iii) Confirmation that the child will be authorized to enter and reside in the receiving country permanently or on the same basis as the prospective adoptive parents.

(iv) Confirmation that the foreign authorized entity consents to the adoption of the child by the prospective adoptive family.

(v) Confirmation that the foreign authorized entity agrees that the child's adoption by the prospective adoptive family may proceed.

(e) After the child is fully-free for adoption establish proof of citizenship for the child and apply for applicable passports.

(f) Submit to the foreign authorized entity written confirmation of the reasons the Department determined that the proposed adoptive placement is in the best interests of the child.

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(g) Establish a direct means for the child's collateral contacts in the receiving Convention country to communicate any health or safety concerns about the child to the Department.

(h) Counsel and inform the child, as appropriate in light of the child's age and maturity, of the effects of the adoption, consider the child's views regarding the adoption, and document the discussion and how the child's views were considered.

(i) If the child's consent to the adoption is required, counsel and inform the child about the effects of granting consent, obtain written consent from the child in a manner that assures the consent is given freely and without any inducement by compensation of any kind, and document the discussion.

(j) Determine whether the receiving Convention country requires a Hague custody declaration prior to placement of the child in the home of the prospective adoptive parents, and, if required, apply for and obtain a Hague custody declaration from the U.S. State Department, as provided in 413-120-0945.

(k) Assure that the child's move to the receiving Convention country will be made under secure and appropriate circumstances and document the arrangements that have been made.

(5) Following completion of all of requirements in section (4) of this rule and prior to the child traveling to the receiving Convention country for placement with the prospective adoptive parents the Department must obtain an order from the court making findings in support of an application for an Hague adoption certificate and allowing international travel for placement in the prospective adoptive home, finds that the prospective adoptive placement is in the best interests of the child, authorizes the child to travel to the foreign country for placement with the prospective adoptive parents, and authorizes release of the court order for purposes of affecting the child's placement.

Stat. Auth.: ORS 417.262, 417.265, 418.005
Stats. Implemented: ORS 417.262, 417.265, 418.005
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

413-120-0930

Transition, Travel, Placement, and Registration Requirements

For an outgoing Convention adoption:

(1) The Department is responsible for assuring that the child is fully prepared for transition to a new home, community, and country.

(2) A component of transition is establishing that the region the child will travel to and reside in is approved as a safe place to travel by the U.S. State Department. The International Affairs and Diversity Program office serves as the liaison with U.S. State Department and the applicable Consular office and makes the determination about travel safety.

(3) The child's move to the receiving Convention country must be made under secure and appropriate circumstances or in the company of the child's prospective adoptive parents.

(4) The child must carry a regular passport from all countries in which the child is a citizen.

(5) If the receiving Convention country requires a Hague custody declaration, the individual accompanying the child during travel must carry a copy of the Hague custody declaration.

(6) After a child is placed in another country for the purpose of adoption, the Department must register the child with U.S. State Department as a United States citizen living abroad.

Stat. Auth.: ORS 417.262, 417.265, 418.005
Stats. Implemented: ORS 417.262, 417.265, 418.005
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

413-120-0940

Post-Placement Supervision

(1) Notwithstanding the provisions of OAR 413-120-0830 the Department may not consent to an outgoing Convention adoption until at least 6 months after the child has been placed with the prospective adoptive parents. This post-placement supervision period may not be waived.

(2) The Department must keep the foreign authorized entity fully informed about the adoption process and the steps taken to complete the adoption.

(3) The Department must comply with the requirements of each of the following subsections:

(a) Monitor the child's adoption placement by reviewing the 90-day written progress reports received from the foreign authorized entity.

(b) Assess, based on the information in the 90-day reports, whether the child is adjusting to and being integrated into the prospective adoptive family's household.

(c) Complete all necessary steps related to the adoption assistance process, if applicable.

Stat. Auth.: ORS 417.262, 417.265, 418.005
Stats. Implemented: ORS 417.262, 417.265, 418.005
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

413-120-0945

Finalization and Post-Finalization Duties

(1) After the post-placement supervision period has expired and before finalization of an outgoing Convention adoption the Department must submit to the foreign authorized entity proof of the Department's consent to the child's adoption.

(2) An outgoing Convention adoption must be finalized in Oregon pursuant to ORS 419B.529.

(3) Concurrent with finalization of the outgoing Convention adoption the Department must request an order from the court making all of the necessary findings required by the Convention and IAA to support an application for a Hague adoption certificate.

(4) After finalization of the outgoing Convention adoption the Department must apply for a Hague adoption certificate. To apply for a Hague adoption certificate the Department must submit all of the following to the Secretary of State:

(a) A completed Hague adoption certificate application on the form prescribed by the Secretary;

(b) A certified copy of the court's order finding that the child is eligible for adoption, that the adoption is in the child's best interest, granting the adoption, and verifying that the requirements of 22 C.F.R. 97.3 have been met; and

(c) Any other additional documentation and information required by the Secretary of State.

(5) For an outgoing Convention adoption, the Department must request two original Hague adoption certificates. The Department provides one original Hague adoption certificate to the adoptive parents and enters one original Hague adoption certificate into the sealed adoption record.

Stat. Auth.: ORS 417.262, 417.265, 418.005
Stats. Implemented: ORS 417.262, 417.265, 418.005, 419B.529
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

413-120-0950

Adoption Assistance

To be eligible for adoption assistance a child who is the subject of a Convention adoption must be a United States citizen and meet all other eligibility requirements under Child Welfare Policy I-G.3.1 "Adoption Assistance", OAR 413-130-0000 to 413-100-0130.

Stat. Auth.: ORS 417.262, 417.265, 418.005
Stats. Implemented: ORS 417.262, 417.265, 418.005
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

413-120-0960

Disclosure to the Adoptive Family

The Department must provide the prospective adoptive parents in an outgoing Convention adoption all the child summary and medical history, as defined in the Child Welfare Procedure Manual, in both the original format and translated into the primary language of the prospective adoptive parents.

Stat. Auth.: ORS 417.262, 417.265, 418.005
Stats. Implemented: ORS 417.262, 417.265, 418.005
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

413-120-0970

Hague Custody Declarations

(1) When a child will be placed for adoption in a Convention country the Secretary of State may issue a Hague custody declaration acknowledging that legal custody of the child has been granted to prospective adoptive parents for the purpose of immigration and adoption in another Convention country. If the receiving Convention country requires a Hague custody declaration for placement of a child for adoption in the receiving Convention country, the Department must apply for and obtain a Hague custody declaration by completing the U.S. State Department's application and submitting the application with a court order with the proper findings supporting the application.

(2) The Hague custody declaration must accompany the child when the child leaves the United States and travels to the other Convention country.

Stat. Auth.: ORS 417.262, 417.265, 418.005
Stats. Implemented: ORS 417.262, 417.265, 418.005
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

ADMINISTRATIVE RULES

413-120-0980

Special Immigrant Juvenile Status

(1) The Department may apply for special immigrant juvenile status for a child in the legal and physical custody of the Department if all of the following requirements are met:

(a) The juvenile court has determined that the child is a dependent ward and eligible for long term foster care;

(b) The child is a minor;

(c) The Department has determined that:

(A) The child cannot return to a parent due to abuse, neglect, abandonment, or similar circumstances; and

(B) It is not in the child's best interests to return to the child's country of nationality or the country of nationality of the child's parents;

(d) The permanency plan for the child has been changed by the court from return to parent to another permanent plan; and

(e) The child is not a United States citizen and does not have lawful permanent resident status.

(2) Department staff must consult with and obtain approval from the Children, Adults and Families Diversity and International Affairs Program Manager before applying for special immigrant juvenile status for a child in the legal and physical custody of the Department.

(3) To apply for special immigrant juvenile status the Department must:

(a) Obtain a court order before the child's eighteenth birthday that makes the necessary findings to support an application for special immigrant juvenile status;

(b) Complete and submit all necessary U.S. Citizenship and Immigration Service forms and applications for special immigrant juvenile status.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 9-2010

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Rules Amended: 413-010-0300, 413-010-0310, 413-010-0320, 413-010-0330, 413-010-0340

Subject: OAR 413-010-0300 about the purpose of the Department's rules (OAR 413-010-0300 to 413-010-0340) concerning the rights of relatives of a child placed into the legal custody of the Department, OAR 413-010-0310 about the definitions used in the rights of relatives rules, OAR 413-010-0320 about a relative's rights around participation in case planning and court hearings, OAR 413-010-0330 about a relative's rights regarding communication and visitation with a child in the legal custody of the Department, and OAR 413-010-0340 are being amended to clarify the Department's policies for this program, include definitions used throughout the rights of relatives rules (OAR 413-010-0300 to 413-010-0340), reflect current Department terminology, and bring the Department into compliance with federal requirements.

OAR 413-015-1200 about the purpose of the Department's rules (OAR 413-015-1200 to 413-015-1230) concerning the assessment of an individual as a safety service provider, OAR 413-015-1210 about the definitions used in the Department's rules concerning the assessment of an individual as a safety service provider, OAR 413-015-1220 about how the Department assesses an individual's involvement in the safety management for a child conducted under a protective action or ongoing safety plan, and OAR 413-015-1230 about the actions the Department takes when an individual has been approved or not approved to be a safety service provider are being adopted to set the requirements and responsibilities for the Department during the assessment of suitability for an individual to assist the Department in managing a child's safety.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-010-0300

Purpose

The Department recognizes the importance of preserving the family ties and relationships of a *child* or young adult who is placed in the legal custody of the Department. These rules, OAR 413-010-0300 to 413-010-0340, describe the rights of relatives and the responsibilities of the Department regarding involvement of a child or young adult's relatives in a child welfare case.

Stat. Auth.: ORS 109.119 - 109.123, 418.005

Stats. Implemented: ORS 109.119 - 109.123, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10

413-010-0310

Definition

The following definitions apply to OAR 413-010-0300 to 413-010-0340:

(1) "Child" means a person under 18 years of age.

(2) "Department" means the Department of Human Services, Child Welfare.

(3) "Designee" means a person who the designator directly and immediately supervises, or a person with equal or greater management responsibility than the designator.

(4) "Indian child" means any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(5) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(6) "Registered domestic partner" means an individual joined in a domestic partnership that has been registered by a county clerk in accordance with ORS 106.300 to 106.340.

(7) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the child or young adult's parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the child or young adult's tribe if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the child or young adult's parent or a former registered domestic partner of the child or young adult's parent if the child or young adult had a relationship with the former domestic partner prior to the child or young adult entering substitute care.

(E) The adoptive parent of a child or young adult's sibling.

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(F) The unrelated legal or biological father or mother of a child or young adult's half-sibling when the child or young adult's half-sibling is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the child or young adult's family, or an individual who self-identifies, related to the child or young adult through the child or young adult's parent by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the child or young adult's family; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the child or young adult's family prior to time the Department placed the child in substitute care.

(e) For the purposes of eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative under these rules unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may be considered for Guardianship Assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) A Permanency Committee has recommended the foster parent for consideration as a guardian.

(8) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(9) "Safety service provider" means a participant in a protective action or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(10) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the children or young adults' legal or biological parent.

(11) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 109.119 - 109.123, 418.005, 419A.004

Stats. Implemented: ORS 109.119 - 109.123, 418.005, 419A.004

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10

413-010-0320

Relative Involvement in Case Planning and Court Hearings

(1) The Department may involve a relative as a safety service provider after the assessment that determines the individual is a safe and appropriate resource for involvement in managing a child's safety as required under Child Welfare Policy I-AB.7, "Assessment of Individuals as Safety Service Providers" OAR 413-015-1200 to 413-015-1230.

(2) The Department must consider a family decision-making meeting as described in ORS 417.365 and when the family decision-making meeting is held, the Department may include any family member as defined in ORS 417.371(4)(a) or relative in this meeting under OAR 413-040-0008.

(3) The Department must provide notice of a court hearing to each party described in the following subsections when:

(a) A relative is currently providing substitute care for a child in the legal custody of the Department pursuant to juvenile court jurisdiction as set forth in ORS 419B.875(6); and

(b) A legal grandparent requests notice in writing and provides a mailing address per ORS 419B.875(7).

(4) A relative who expresses to the Department an interest in a child has a right to provide information about the child's background and to provide input on the safety, attachment, and permanency needs of the child.

(5) Unless an exception to contact is provided by the child welfare program manager or designee under OAR 413-070-0072(1) or an order of

a court, under 42 USC 471(a)(20) the Department must provide notice, within 30 calendar days after the removal of a child from the custody of the parent or parents of the child, to all grandparents and other adult relatives of the child known to the Department, that complies with all of the following subsections:

(a) Specifies that the child has been or is being removed from the custody of the parent or parents of the child;

(b) Explains options under federal and state law to participate in the care and placement of the child;

(c) Describes the requirements the individual must meet to become a relative caregiver and the services and supports available for a child placed with a relative caregiver under federal and state law; and

(d) Describes the eligibility criteria for and availability of Guardianship Assistance benefits when all Guardianship Assistance eligibility criteria are met.

Stat. Auth.: ORS 109.119 - 109.123, 417.365, 417.371, 418.005, 419B.875

Stats. Implemented: ORS 109.119-109.123, 417.365, 417.371, 418.005, 419B.875

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10

413-010-0330

Communication and Visitation

A *relative* has the right to communicate and visit with a child or young adult in the Department's legal custody when such communication or contact is set forth in:

(1) The child or young adult's visitation plan developed under Child Welfare Policy I-E.3.5, "Visits and Other Types of Child and Family Contact" OAR 413-070-0800 to 413-070-0880;

(2) The opportunities for ongoing connection and support developed under Child Welfare Policy I-E.3.3.1, "Search for and Engagement of Relatives" OAR 413-070-0060 to 413-070-0087 and approved by the caseworker; or

(3) An order of a court.

Stat. Auth.: ORS 109.119 - 109.123, 418.005

Stats. Implemented: ORS 109.119 - 109.123, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10

413-010-0340

Department Responsibility to Make Diligent Efforts to Place a Child or Young Adult with Relatives

The Department must:

(1) Make diligent efforts to place a child or young adult in substitute care with a relative or person who has a caregiver relationship, as defined in ORS 419B.116, to the child pursuant to ORS 419B.192(1).

(2) Make diligent efforts to place a child or young adult in substitute care with his or her siblings so long as placement with the siblings is in the best interests of the child or young adult and the child or young adult's siblings pursuant to ORS 419B.192(2).

(3) In making the diligent efforts described in sections (2) and (3) of this rule, the Department must consider the factors set forth in ORS 419B.192(3) and follow the assessment process described in Child Welfare Policies I-E.3.3.1, "Search for and Engagement of Relatives" OAR 413-070-0060 to 413-070-0087 and II-B.1.1, "Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-adoptive Parents" OAR 413-200-0270 to 413-200-0296.

Stat. Auth.: ORS 109.119 - 109.123, 418.005, 419B.116, 419B.192

Stats. Implemented: ORS 109.119 - 109.123, 418.005, 419B.116, 419B.192

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10

413-015-1200

Purpose

(1) The purpose of these rules, OAR 413-015-1200 to 413-015-1230, is to describe the Department's responsibility to assess an individual for consideration as a safety service provider and to determine whether the individual is suitable as a *safety service provider*.

(2) An individual employed by an agency providing services to a family through a current contract with the Department is not covered under these rules.

(3) Requirements for the assessment of an individual for the purpose of ongoing connection and support with a child or certification as a relative caregiver or foster parent are not covered under these rules.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 9-2010, f. & cert. ef. 7-1-10

413-015-1210

Definitions

The following definitions apply to OAR 413-015-1200 to 413-015-1230:

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(1) "Caseworker" means a Child Welfare employee assigned primary responsibility for a child or young adult served by Child Welfare.

(2) "Child" means a person under 18 years of age.

(3) "CPS worker" means a Child Protective Services (CPS) worker who is an employee of Child Welfare and has completed the mandatory Department training for child protective service workers.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(6) "LEDS" means Law Enforcement Data System, the computerized criminal history information system maintained by the Oregon State Police.

(7) "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 safety threats to which the child is vulnerable and determined the parent or caregiver is unable or unwilling to protect the child. An ongoing safety plan can be in-home or out-of-home and is adjusted when necessary to provide the least intrusive interventions.

(8) "Protective action" means an immediate, same day, short-term plan sufficient to protect a child from a safety threat in order to allow completion of the CPS assessment.

(9) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(10) "Safety service provider" means a participant in a protective action or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(11) "Safety threat" means family behavior, conditions, or circumstances that could result in harm to a child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 9-2010, f. & cert. ef. 7-1-10

413-015-1220

Assessment of an Individual's Involvement in Safety Management

(1) To assess an individual as a safety service provider for a specific family in a protective action or an ongoing safety plan, a CPS worker or caseworker must take all of the following actions:

(a) Identify and contact an individual who is a prospective safety service provider.

(b) Gather information from the individual regarding his or her:

(A) Relationship with the child and the child's family; and

(B) Willingness and ability to fulfill the specific role and responsibilities of a safety service provider for the identified family.

(c) Provide the individual with information regarding the specific role and responsibility of the individual to assist in managing a child's safety.

(d) Search the Department's information system and review any historic information regarding the individual that may be useful in assessing the individual's ability to be a safety service provider.

(e) Conduct a criminal records check on the individual, provide notice as described in Child Welfare Policy I-AB.6, "Access to Law Enforcement Data System in Local Child Welfare Offices" OAR 413-015-1100 to 413-015-1125, and review the individual's criminal history to assess the individual's ability to be a safety service provider.

(2) After the CPS worker or caseworker has considered all the information gathered pursuant to section (1) of this rule, the CPS worker or caseworker must determine the individual's suitability as a safety service provider. In making this determination, the worker must consider whether the individual is willing and able to:

(a) Assist in managing the safety of the child;

(b) Cooperate with any restrictions on contact between the child and others;

(c) Support, verbally and through actions, the protective action and ongoing safety plan; and

(d) Fulfill the identified role and responsibilities required of the individual in a protective action or an ongoing safety plan.

(3) A CPS worker or caseworker must consult with and receive approval from a supervisor prior to engaging an individual as a safety service provider whenever the individual's past circumstances, conditions, or behaviors include one of the items listed in the subsections of this section so long as those circumstances, conditions, or behaviors do not impact negatively the individual's ability to fulfill the specific role and responsibilities in managing a child's safety:

(a) A record of child abuse or neglect;

(b) A criminal history; or

(c) A history of drug or alcohol abuse.

(4) The CPS worker or caseworker must document in the Department's information system:

(a) The basis for the determination regarding whether an individual is suitable as a safety service provider; and

(b) The supervisor who provided the approval required in section (3) of this rule.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 9-2010, f. & cert. ef. 7-1-10

413-015-1230

Safety Service Provider Approval

(1) The CPS worker or caseworker must inform an individual who has been considered and selected as a safety service provider that the individual has been approved as a safety service provider. The CPS worker or caseworker must further inform an approved safety service provider that the role of a safety service provider:

(a) Is temporary; and

(b) The role or responsibilities may change if the Department obtains new information that changes the determination that the individual is suitable to manage a child's safety, prevents the individual from fulfilling the role identified in assisting to manage a child's safety, or a safety threat changes, is eliminated, or can be managed by a child's parent or guardian.

(2) The CPS worker or caseworker must inform an individual who has been considered but has not been selected as a safety service provider that the individual has not been approved to be a safety service provider.

(3) When an individual has been informed that the individual is approved or not approved as a safety service provider or the determination that an individual is approved changes, if the status change results in a change in the protective action or ongoing safety plan, the CPS worker or caseworker must refer to OAR 413-015-0435 and 413-015-0450.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 9-2010, f. & cert. ef. 7-1-10

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 10-2010

Filed with Sec. of State: 7-1-2010

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Rules Amended: 413-070-0060, 413-070-0063, 413-070-0066, 413-070-0069, 413-070-0072, 413-070-0075, 413-070-0078, 413-070-0081, 413-070-0087

Rules Repealed: 413-070-0090, 413-070-0092, 413-070-0093

Subject: OAR 413-070-0060 about the purpose of the Department's rules concerning the search for and engagement of relatives and persons with a caregiver relationship for a child or young adult when managing the child or young adult's safety, substitute care, permanent placement, or other needs; OAR 413-070-0063 about the definitions used in the search for and engagement of relatives and persons with a caregiver relationship rules; OAR 413-070-0066 about the Department's responsibilities when conducting a search for a child or young adult's relatives; OAR 413-070-0069 about the Department's responsibilities regarding when and how it identifies relatives and persons with a caregiver relationship; OAR 413-070-0072 about the Department's responsibilities concerning who it contacts when seeking to locate or engage a child or young adult's relatives or persons with a caregiver relationship and when it contacts those identified; OAR 413-070-0075 about how the Department assesses a child or young adult's relative for possible involvement in safety management; OAR 413-070-0078 about how the Department evaluates a child or young adult's relative or person with a caregiver relationship as a possible substitute care provider; OAR 413-070-0081 about when and how the Department reviews its effort to place a child or young adult with a relative or person with a caregiver relationship; and OAR 413-070-0087 about how the Department provides relatives and persons with a caregiver relationship the opportunity for ongoing connection and support with a child or young adult are being amended — and OAR 413-070-0090 about the Department's procedures in concluding that relative was not a suitable resource, OAR 413-070-0092 about how the Department developed

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an alternative permanency plan for a child, and OAR 413-070-0093 about the actions the Department took when it concluded a relative was a potential placement resource are being repealed — to clarify the rules concerning the search for and engagement of relatives and persons with a caregiver relationship for a child or young adult when managing the child or young adult's safety, substitute care, permanent placement, or other needs; reflect current Department terminology; and bring the search for and engagement of relatives and persons with a caregiver relationship rules into compliance with federal requirements.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-070-0060

Purpose

The purpose of these rules, OAR 413-070-0060 to 413-070-0087, is to describe the Department's responsibility to search for and engage a child or young adult's relatives and persons with a *caregiver relationship*. The Department seeks to identify a child or young adult's relatives and persons with a caregiver relationship for one or more of the following purposes:

- (1) To engage in managing the child or young adult's safety;
- (2) To provide a substitute care resource;
- (3) To provide a permanent placement resource;
- (4) To develop and maintain family relationships and cultural connections with the child or young adult in substitute care; and
- (5) To gather family information and family history to plan for meeting the child or young adult's needs.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001 f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10

413-070-0063

Definitions

The following definitions apply to OAR 413-070-0060 to 413-070-0093:

(1) "Caregiver relationship" means a relationship between a person and a child that meets the requirements of the following subsections:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, at least six months during a dependency proceeding, or half of the child's life if the child is less than six months of age.

(b) The person had physical custody of the child or resided in the same household as the child and provided the child on a daily basis with the love, nurturing, and other necessities required to meet the child's psychological and physical needs.

(c) The child depended on the relationship to meet the child's needs.

(d) A caregiver relationship does not include a relationship between a child and a person who is the unrelated foster parent of the child unless the relationship continued for a period of at least twelve consecutive months.

(2) "Certificate of approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, pre-adoptive home, or a regular foster home.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Designee" means a person who the designator directly and immediately supervises or a person with equal or greater management responsibility than the designator.

(6) "Foster parent" means an individual who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(7) "Indian child" is any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(9) "Registered domestic partner" means an individual joined in a domestic partnership that has been registered by a county clerk in accordance with ORS 106.300 to 106.340.

(10) "Relative" means:

(a) An individual with one of the following relationships to the child or young adult through the child or young adult's parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a relative under this paragraph, the child or young adult must have had a relationship with the spouse prior to the child or young adult entering substitute care.

(F) For the purposes of an international adoption, relative means an individual described in paragraphs (A) to (D) of this subsection.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the child or young adult's tribe if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(C) A stepparent described in OAR 413-100-0020(27)(c) or former stepparent if the child or young adult had a relationship with the former stepparent prior to the child or young adult entering substitute care; a stepbrother; or a stepsister.

(D) The registered domestic partner of the child or young adult's parent or a former registered domestic partner of the child or young adult's parent if the child or young adult had a relationship with the former domestic partner prior to entering substitute care.

(E) The adoptive parent of a child or young adult's sibling.

(F) The unrelated legal or biological father or mother of a child or young adult's half-sibling when the child or young adult's half-sibling is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the child or young adult's family, or an individual who self-identifies, related to the child or young adult through the child or young adult's parent by blood, adoption, or marriage to a degree other than an individual specified as a relative in paragraphs (A) to (D) of subsection (a) of this section.

(d) An individual, although not related by blood, adoption, or marriage identified as:

(A) A member of the family by the child or young adult or the child or young adult's family; and

(B) An individual who had an emotionally significant relationship with the child or young adult or the child or young adult's family prior to time the Department placed the child in substitute care.

(e) For the purposes of eligibility for the Guardianship Assistance program:

(A) A stepparent is considered a parent and is not a relative under these rules unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the child's adoptive or biological parent has been terminated by divorce or death.

(B) A foster parent may be considered for Guardianship Assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of guardianship;

(iii) The foster parent has cared for the child for at least the past 12 consecutive months; and

(iv) A Permanency Committee has recommended the foster parent for consideration as a guardian.

(11) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

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(12) "Relative search" means the efforts of the Department to identify, locate, and document the contact with a child or young adult's relatives.

(13) "Safety service provider" means a participant in a protective action or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(14) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children or young adult's legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the children or young adults' legal or biological parent.

(15) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10

413-070-0066

Legal Obligations Regarding Placement Preference

(1) The Department must conduct a search for a child or young adult's relatives:

(a) To assess the relatives' availability as a placement resource;

(b) To make diligent efforts to place a child or young adult with a relative or person with a caregiver relationship as the substitute care placement resource;

(c) To place the child or young adult with siblings who are also in substitute care, unless placement of the siblings together is not in the best interest of either the child or young adult or the child or young adult's sibling; and

(d) When necessary to place a child or young adult with a relative or person with a caregiver relationship as a permanent placement resource.

(2) When a child or young adult must be placed in substitute care and the Department is unable to place the child or young adult with a relative at the time of initial placement, the Department must determine the substitute care placement in order of preference using the placement matching criteria set forth in Child Welfare Policy I-E.3.1, "Placement Matching" OAR 413-070-0600 to 413-070-0645.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01, Renumbered from 413-070-0068; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10

413-070-0069

Responsibilities to Identify Relatives and Persons with a Caregiver Relationship

(1) The Department must begin the search for relatives or persons with a caregiver relationship:

(a) During a CPS assessment when the Department has determined that a child is unsafe and an individual other than the parent or guardian is required to manage a child's safety; or

(b) When a parent or guardian:

(A) Is requesting the voluntary placement of the child; or

(B) Is voluntarily giving custody of the child to the Department.

(2) The Department must communicate with the following individuals to identify the child or young adult's relatives or persons with a caregiver relationship:

(a) The child or young adult's parents or legal guardians;

(b) The child or young adult, whenever possible;

(c) When the child or young adult is a refugee, other individuals identified in Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380; and

(d) When the child or young adult is an Indian child, the tribe, pursuant to Child Welfare Policy I-E-E.2.1, "Placement of Indian Children" OAR 413-070-0100 to 413-070-0260.

(3) The Department may use, but is not limited to using, the following resources to identify or locate a child or young adult's relatives or persons with a caregiver relationship:

(a) An individual identified as a relative by the child or young adult or the child or young adult's family;

(b) An individual thought or known by the Department to be a relative of the child or young adult;

(c) Oregon data information systems available to the Department;

(d) The internet;

(e) Collateral contacts; and

(f) Other community resources available to search for the identity and contact information of relatives or persons with a caregiver relationship.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10

413-070-0072

Contact with Relatives or Persons with a Caregiver Relationship

(1) Unless a child welfare program manager or designee approves not contacting or a court orders no contact with an identified individual because the contact may compromise a child or young adult's or another individual's safety, the Department must make diligent efforts to contact each individual identified under OAR 413-070-0069 as soon as reasonably possible and no later than 30 calendar days after a child's initial:

(a) Removal from the custody of a parent or guardian; or

(b) Placement in substitute care through a voluntary placement agreement or voluntary custody agreement.

(2) During the contact required under section (1) of this rule, the Department must:

(a) Provide each grandparent and adult relative with notice in the individual's primary language that specifies:

(A) Whether the child or young adult has been removed from the custody of a parent or guardian to manage child safety or has been placed in substitute care through a voluntary placement agreement or voluntary custody agreement;

(B) Whether the child or young adult is currently residing with a relative;

(C) The opportunities and requirements associated with being assessed as a safe and appropriate safety service provider;

(D) The opportunities and requirements associated with being assessed to become a relative caregiver; and

(E) The rights of relatives set forth in Child Welfare Policy I-A.4.5, "Rights of Relatives" OAR 413-010-0300 to 413-010-0340, and the statutes governing intervention, limited participation, and post-adoption communication agreements.

(b) Request the names of other relatives not previously identified.

(3) The Department must document in the Department's information system:

(a) The approval not to contact an individual under section (1) of this rule;

(b) The name of each individual with whom the Department attempted or made contact;

(c) The individual's relationship to the child or young adult;

(d) The type of contact;

(e) Each individual's response to the notice required in subsection

(2)(a) of this rule when a response is received; and

(f) The individual's contact information.

(4) The Department may make a decision to engage an individual as a safety service provider or may place a child in substitute care with a relative prior to contacting all known relatives.

(5) The Department must respond to inquiries from a relative in person or by telephone as soon as reasonably possible and no later than within 15 business days, if a contact telephone number has been provided or discovered, or, when a telephone number has not been provided, contact the individual by other means, including by mail or electronic mail if no other means of contact was identified by the relative.

(6) The caseworker may utilize any meeting or other contact with the family to identify and engage relatives for the purposes set forth in OAR 413-070-0060.

(7) Whenever the Department is provided the name of a relative or person with a caregiver relationship previously unknown to the Department through the diligent search efforts, the Department must:

(a) Document the name and contact information in the Department's information system;

(b) Attempt to contact the individual as soon as reasonably possible and no later than within 15 business days; and

(c) Provide notice as set forth in the requirements and limitations of sections (1) and (2) of this rule.

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(8) When the Department is unable to locate contact information for an identified relative or person with a caregiver relationship, the Department must document the efforts to obtain contact information in the Department's information system.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10

413-070-0075

Assessment of a Relative or Person with a Caregiver Relationship for Involvement in Safety Management

(1) The Department must assess an individual identified as a child or young adult's relative or person with a caregiver relationship prior to engaging the individual to assist in safety management as a safety service provider under Child Welfare Policy I-AB.7, "Assessment of an Individual as a Safety Service Provider" OAR 413-015-1200 to OAR 413-015-1230.

(2) The Department must document each decision regarding the involvement of a relative or person with a caregiver relationship as a safety service provider in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10

413-070-0078

Consideration of a Relative or Person with a Caregiver Relationship as a Substitute Caregiver

(1) The Department is responsible for the selection of and placement with a substitute caregiver who best meets the safety, permanency, and well-being needs of the child or young adult.

(2) Whenever possible, the Department must seek the input of the child or young adult and the child or young adult's parents or guardians regarding their preferences of which relatives to assess for the purposes of placement.

(3) When a relative or person with a caregiver relationship has been identified for consideration as a substitute caregiver, the Department must consider:

(a) The individual's ability to provide safety for the child or young adult, including the individual's willingness to cooperate with restrictions on contact between the child or young adult and others and to prevent anyone from influencing the child or young adult on the allegations of the case;

(b) The individual's ability to meet the child or young adult's physical, emotional, and educational needs, including the need to continue in the same school or educational placement;

(c) The individual's ability to support the Department's implementation of the permanent plan;

(d) When more than one individual requests to have the child or young adult placed with them, which individual has the closest existing relationship with the child or young adult; and

(e) When a child or young adult's siblings are also in need of substitute care or continuation in substitute care, the individual's ability to provide substitute care for the child or young adult's siblings.

(4) The Department considers as a substitute care resource an individual described in OAR 413-070-0063(10)(a)-(c) prior to considering an individual described in OAR 413-070-0063(10)(d).

(5) The Department may use the expedited certification process under Child Welfare Policy II-B.1.1, "Responsibilities for Certification and Supervision of Relative Caregivers, Foster Parents, and Pre-adoptive Parents" OAR 413-200-0270 to 413-200-0296 to place the child or young adult with a relative or person with a caregiver relationship prior to contacting all known relatives or persons with a caregiver relationship.

(6) To begin the assessment of a relative or person with a caregiver relationship for the purpose of placement, the Department must complete each of the following actions:

(a) Explain to the relative or person with a caregiver relationship the requirements of certification, the certification process, and the Department's responsibility to select a substitute care resource best able to meet the child or young adult's needs for safety, permanency and well-being.

(b) Search the Department's information system and review any historic information regarding the individual that may be useful in assessing the individual's ability to provide substitute care.

(c) When the relative or person with a caregiver relationship has an interest in providing substitute care, obtain from the individual a signed

application for a certificate of approval and a signed consent for a fingerprint-based criminal offender records check of national crime information and complete the requirements of each of the following paragraphs:

(A) Conduct a review of the applicant's records in the Department's information system for any record of child abuse or neglect, and criminal history as required in OAR 413-200-0274(2)(i) and (j); and

(B) Assess the applicant's ability to meet the Department's certification standards as described in Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents" OAR 413-200-0301 to 413-200-0396, unless, based on the analysis of the information gathered from the applicant's criminal history or child abuse and neglect history, the Department has made a decision to deny a certificate of approval based on the applicant's criminal history or child abuse or neglect history because:

(i) The applicant has committed a crime for which approval may not be granted as described in OAR 413-120-0450(4);

(ii) An exception, as described in OAR 413-120-0450(7), to the applicant's criminal history will not be granted; or

(iii) Based on the applicant's child abuse and neglect history, the Department has made the decision the applicant is not an appropriate placement resource for the child or young adult.

(7) Prior to preparing a notice of intent to deny a certificate of approval under OAR 413-200-0296, contact and inform the applicant of the Department's decision. After the applicant receives the Department's decision and the reasons for the decision:

(a) When the applicant elects to withdraw the application, the certifier must document in the Department's information system that the applicant has withdrawn and the reasons for the Department's decision not to continue with further assessment for the purposes of certification.

(b) When the applicant elects not to withdraw the application, the Department must issue a notice of intent to deny a certificate of approval under OAR 413-200-0296.

(8) The Department must continue efforts to contact other individuals identified in the search efforts described in OAR 413-070-0004 for the purposes of assessment as a substitute caregiver when the initial efforts described in this rule did not result in the identification and certification of a relative caregiver for the child or young adult.

(9) When the Department is considering placement with an individual who lives in a state other than Oregon, Child Welfare Policy I-B.3.4.2, "Interstate Compact on the Placement of Children" OAR 413-040-0200 to 413-040-0330 applies.

(10) At each court hearing, the Department must report to the court the diligent efforts the Department has made to place a child or young adult with relatives and to place siblings together.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10

413-070-0081

Review of a Child or Young Adult's Substitute Care Placement

(1) As set forth in section (2) of this rule, the Department must review the diligent efforts to place a child or young adult with a relative or person with a caregiver relationship and determine:

(a) Whether the child or young adult and his or her siblings, if the siblings are also in substitute care, have been placed with a relative or person with a caregiver relationship;

(b) If placement has not occurred already, the current efforts to identify a relative or person with a caregiver relationship able and willing to provide substitute care; and

(c) The additional contact with and assessment of identified relatives necessary to achieve placement with a relative.

(2) The Department must review the efforts to place a child or young adult with a relative or person with a caregiver relationship:

(a) No more than 30 calendar days from the date of the child or young adult's initial placement in substitute care;

(b) When the child or young adult's family, through a family meeting, has recommended substitute care, permanency, or concurrent permanency relative resources other than the current substitute caregiver and those relative resources have not yet been assessed;

(c) When it appears that a child or young adult likely is to experience or experiences a change in substitute caregiver;

(d) When the child or young adult's substitute caregiver does not meet the child or young adult's needs for safety, permanency, and well-being;

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(e) During every regular case review described in Child Welfare Policy I-B.3.1, "Developing and Managing the Case Plan" OAR 413-040-0000 to 413-040-0032; and

(f) No more than 30 calendar days prior to a court or administrative review hearing.

(3) When a child or young adult is placed with a relative or person with a caregiver relationship, The Department reviews whether the substitute caregiver is able to best meet the child or young adult's needs for safety and well-being as described in Child Welfare Policy I-E.3.1, "Placement Matching" OAR 413-070-0613 to 413-070-0640.

(4) The caseworker must document in the Department's information system:

(a) The date of the review required under section (1) of this rule;

(b) The names of each individual who participated in the review;

(c) Whether and how a child or young adult's placement with a relative or person with a caregiver relationship has been met and whether siblings have been placed together;

(d) Recommended actions; and

(e) Any additional actions the Department will take to place a child or young adult, and his or her siblings, if the siblings are also in substitute care, with a relative or person with a caregiver relationship in a placement resource that meets the child's needs for safety, permanency, and well-being.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10

413-070-0087

Opportunity for Ongoing Connection and Support

(1) The caseworker must assess a relative's interest and appropriateness in maintaining family relationships and cultural connections with a child or young adult when the relative is not a placement resource, based on the relative's ability to:

(a) Meet the safety, permanency, and well-being needs of the child or young adult; and

(b) Provide appropriate ongoing support.

(2) When a relative or person with a caregiver relationship meets the criteria described in section (1) of this rule, the caseworker must provide the child or young adult's relative, including a relative who resides outside the state of Oregon, with ongoing opportunities to develop and maintain family relationships and cultural connections with the child or young adult that support the child or young adult's safety and well-being while the child or young adult remains in substitute care.

(3) The parameters of a relative's contact with and support of the child are documented in the Department's information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10

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Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 11-2010

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Repealed: 413-200-0210, 413-200-0220

Subject: OAR 413-200-0210 — about the purpose of the Department's rules for family group homes (a group living situation more structured than a foster home, but less structured than a group residential program) and the purpose of a family group home placement; and OAR 413-200-0220 — about the definition of key terms used in these rules are being repealed because the Department no longer utilizes family group homes when making placement decisions for children and young adults in the Department's custody. The Department also is repealing any unpromulgated rules regarding family group homes, certifying of and contracting for family group homes, and payments to family group homes.

Rules Coordinator: Annette Tesch—(503) 945-6067

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Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 12-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Suspended: 413-070-0067

Subject: OAR 413-070-0067 about the Department utilizing foster care placements as a temporary resource for children in the Department's care and custody is being suspended as the rule's relevant provisions have been moved to OAR 413-120-0520 and its other provisions more need not appear in administrative rules or no longer accurately reflect Department terminology, policy, or practice.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-070-0067

Foster Care Providers as Temporary Resources

Although some foster parents become permanent resources for children, at placement it is the responsibility of the worker to inform the foster parent that planning for the child does not necessarily include permanent placement with the foster parents. SOSCF workers shall discuss with foster parents that the foster parent role is that of a transitional resource. The worker shall keep the foster parent informed of the primary permanent and alternative permanent planning for the child. If the foster parents become interested in the permanent placement of a child in their home, procedures outlined in SOSCF Policy I-G.1.1, Current Caretaker Adoption Planning, apply.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 419A.004(16), 419B.192(1)&(2) & 109.119(1)-(7)

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01, Renumbered from 413-070-0096; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; Suspended by CWP 12-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

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Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 13-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Adopted: 413-110-0132, 413-110-0150

Rules Amended: 413-010-0081, 413-010-0082, 413-010-0083, 413-010-0085, 413-010-0086, 413-070-0520, 413-070-0524, 413-070-0536, 413-070-0540, 413-070-0550, 413-110-0100, 413-110-0110, 413-110-0130, 413-110-0140

Rules Suspended: 413-010-0084, 413-110-0120

Subject: These rules about permanency plans, adoptive placement selection, and placement decisions for children in the care and custody of the Department, are being changed because the Department is redesigning the structure by which it makes these decisions. These rules set the requirements and responsibilities for the Department around changing a child's permanency plan, consideration of adoption as a permanency option, consideration and selection of prospective adoptive resources, the selection decision and review process for an adoption placement selection, and post adoptive selection placement and support for the adoptive child and family. These rules are also being amended, adopted, and suspended to bring the Department into compliance with the Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949 - 3981) and ORS 419B.192 which direct that during the placement of a child consideration of the child's relatives and placement of siblings together are the first preference for permanency. These rules are also being amended, adopted, and suspended to explain the Department's responsibility for decision-making in permanency planning and adoption placement selection.

OAR 413-010-0081 about the purpose of the Department's rules (OAR 413-010-0081 to 413-010-0086) regarding the Department's responsibilities when releasing an adoption home study during the process to select an adoptive resource for a child and the responsibilities of an individual receiving a copy of the adoption home study, OAR 413-010-0082 about the definitions of key terms used in these rules (OAR 413-010-0081 to 413-010-0086), OAR 413-010-0083 about to whom and under which circumstances an adoption home study may be released, OAR 413-010-0085 about who may determine the release of an adoption home study is inappropriate and the truncated version of the adoption home study the Department may

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release, and OAR 413-010-0086 about which individuals may request, how they may request, and their responsibilities once they receive a copy of an adoption home study are being amended; and OAR 413-010-0084 about the redaction of information in an adoption home study before the study is released is being suspended to clarify the Department's policy for releasing an adoption home study for the purpose of selecting an adoptive resource for a child, include definitions used throughout these rules (OAR 413-010-0081 to 413-010-0086), and reflect current Department terminology, policy, and practices. OAR 413-010-0082 about the definitions used in OAR 413-010-0081 to 413-010-0086 also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-010-0083 also is being amended to state the circumstances under which an adoption home study may be released to a member of the Refugee Child Welfare Advisory Committee (RCWAC) or adoption committee or a court for purposes of approving an adoption, and to restate language about when a public or private agency or a subject family may review an adoption home study. OAR 413-010-0085 also is being amended to explain the circumstances under which the Department may release a redacted or summary adoption home study report. OAR 413-010-0086 also is being amended to state the circumstances under which the Department may release an adoption home study report to a child's CASA, an Indian child's tribal representative, a RCWAC representative, or a child's attorney.

OAR 413-070-0520 about the purpose of the Department's Another Planned Permanent Living Arrangement (APPLA) rules (OAR 413-070-0520 to 413-070-0565), OAR 413-070-0524 about the definitions used in these rules, OAR 413-070-0540 about how the Department determines an APPLA is the appropriate permanency plan for a child, and OAR 413-070-0550 about how the Department reviews and approves an APPLA permanency plan are being amended to clarify the Department's policy for APPLA permanency plans, include definitions used throughout the APPLA rules, OAR 413-070-0520 to 413-070-0565, and reflect current Department policy, practice, and terminology. OAR 413-070-0520 also is being amended to clarify the purpose of OAR 413-070-050 to 413-070-0565. OAR 413-070-0524 also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-070-0536 about when APPLA may be considered is being amended to correctly identify defined terms. OAR 413-070-0540 also is being amended to include individuals required to be a part a child's permanency planning when an APPLA is being considered. OAR 413-070-0550 also is being amended to state the Department methodology, practice, and decision-making when APPLA is considered as a permanency plan.

OAR 413-110-0100 about the purpose of the Department's sibling permanency placement planning rules (OAR 413-110-0100 to 413-110-0150), OAR 413-110-0110 about the definitions used in these rules, OAR 413-110-0130 about the Department's priorities when developing a permanency plan for siblings, and OAR 413-110-0140 about how the Department reviews and the notice the Department provides regarding a permanency committee recommendation regarding permanent separation of siblings are being amended; OAR 413-110-0120 about the values the Department considered when developing a permanency plan for siblings is being suspended; and OAR 413-110-0132 about how the Department considers and determines whether to adopt a permanency plan recommending permanent separation of siblings and OAR 413-110-0150 about the Department's recruitment efforts to identify a potential guardian or adoptive resource who can initiate and maintain connections between siblings when separation of siblings has occurred as a result of a Department action or decision are being adopted to clarify the Department's policy regarding permanency plans resulting in separation of siblings, include definitions used throughout these rules, OAR 413-110-0100 to 413-110-0150, and reflect current Department policy, practice, and terminology.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-010-0081

Purpose

These rules, OAR 413-010-0081 to 413-010-0086, describe the responsibilities of the Department when releasing an adoption home study for the purpose of selecting an adoptive resource for a child and the responsibilities of an individual receiving a copy of the adoption home study.

Stat. Auth.: ORS 409.050, 418.005

Stats Implemented: ORS 409.225, 418.005, 419A.255, 419B.035

Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06; CWP 18-2006, f. & cert. ef. 8-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-010-0082

Definitions

The following definitions apply to OAR 413-010-0081 to 413-010-0086:

(1) "Adoption agency" means an organization providing any of the following services:

(a) Identifying a child for adoption and arranging an adoption;

(b) Securing the necessary consent for relinquishment of parental rights and to adoption;

(c) Performing a background study on a child or a home study on a prospective adoptive parent and reporting on such a study;

(d) Making determinations of the best interests of a child and the appropriateness of adoption placement for the child;

(e) Monitoring a case after placement until final adoption;

(f) When necessary because of disruption before final adoption, assuming custody and providing childcare or other social services for the child pending an alternative placement.

(2) "Adoption committee" means either a central office adoption committee or a local adoption committee.

(3) "Adoption home study" means a document which includes an assessment of a potential adoptive resource to determine the suitability of the potential adoptive resource to make a lifelong, permanent commitment to adopt a child in the Department's custody, in the custody of a public welfare agency in another state, or under the jurisdiction of a juvenile court in another state.

(4) "Adoptive Resource" means an individual or individuals selected as the adoptive family for a child and the selection has not been subject to an administrative review, or if subject to a review, has been sustained by that review.

(5) "CASA" means Court Appointed Special Advocate, a volunteer who is appointed by the court, is a party to the juvenile proceeding, and is an advocate for the child pursuant to ORS 419A.170.

(6) "Child" means a person under 18 years of age.

(7) "Department" means the Department of Human Services, Child Welfare.

(8) "Designee" means an individual whom the designator directly and immediately supervises, or an individual with equal or greater management responsibility than the designator.

(9) "Indian child" means any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(10) "RCWAC" means the Refugee Child Welfare Advisory Committee.

Stat. Auth.: ORS 418.005, 418.945

Stats Implemented: ORS 418.005, 418.945

Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06; CWP 18-2006, f. & cert. ef. 8-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-010-0083

Release and Review of Adoption Home Study Reports

(1) An adoption home study of a potential adoptive resource for a child in the legal custody of the Department is released only to:

(a) A child's CASA, a child's attorney, an Indian child's tribe, a representative of the RCWAC, and members of the adoption committee when the potential adoptive resource has been selected by an adoption committee to be considered as an adoptive resource or has been selected by a case-worker as the adoptive resource;

(b) A public or private adoption agency upon the written request and authorization for release from each individual who is a subject of the adoption home study;

(c) The court for purposes of approving an adoption.

(2) When an adoption home study previously has not been provided to individuals who are the subject of the adoption home study, the adoption home study may be provided to the individuals upon written request. Prior to releasing the adoption home study, the Department must redact the

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names and identifying information of individuals who have provided information for the adoption home study prior to release.

(3) An adoption home study released under these rules, OAR 413-120-0081 to 413-120-0086, must have a signed valid release of information from the potential adoptive resource and must be kept confidential as described in OAR 413-120-0033.

Stat. Auth.: ORS 409.050, 409.225, 418.005, 419B.035
Stats Implemented: ORS 409.225, 418.005, 419B.035
Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06; CWP 18-2006, f. & cert. ef. 8-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-010-0084

Pre-Release Redaction of Adoption Home Study Report

(1) Before releasing an adoption home study report to a child's CASA, child's tribe, or child's attorney, and before releasing a report to a public or private adoption agency without an authorization signed by family members who are the subject of the report, the Department shall redact from the report information that is confidential by federal or state law. Information that must be redacted under this provision includes:

- (a) Protected health information;
- (b) Mental health information;
- (c) Substance abuse information;
- (d) Criminal record check information; and
- (e) Social security numbers.

(2) Before releasing an adoption home study report to a child's CASA, child's tribe, or child's attorney, or releasing a report to a public or private adoption agency without an authorization signed by family members who are the subject of the report, the Department may redact information from the report to ensure that the prospective adoptive family cannot be identified as a result of the release of the report. Personal information about the prospective family, the disclosure of which would be unreasonable, will not be disclosed and sensitive information provided by others will be protected. Information that may be redacted under this provision includes:

- (a) The identity of references for the prospective adoptive family;
- (b) Information obtained from adult children of the prospective adoptive family;
- (c) Names of schools, businesses, or other places or things that could help identify a person named in the report or who provided third party information for the report;
- (d) Dates of birth;
- (e) Last names of persons;
- (f) Addresses;
- (g) Personal identification numbers;
- (h) Telephone numbers;
- (i) Personal information that would likely embarrass members of the prospective adoptive family if the identity of the family became known; and
- (j) Other information that could be used to identify a person, such as a job title, nickname, ceremonial title, a well known achievement or subject of notoriety.

Stat. Auth.: ORS 409.050, 418.005
Stats Implemented: ORS 409.225, 418.005, 419A.255, 419B.035
Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06; CWP 18-2006, f. & cert. ef. 8-1-06; Suspended by CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-010-0085

Circumstances in Which Release of an Adoption Home Study Report May be Inappropriate

The Adoption Program Manager or designee may determine that prior to release of an adoption home study confidential information can be redacted or a summary of the adoption home study provided.

Stat. Auth.: ORS 409.050, 409.225, 418.005, 419B.035
Stats Implemented: ORS 409.050, 409.225, 418.005, 419B.035
Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06; CWP 18-2006, f. & cert. ef. 8-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-010-0086

Release of Adoption Home Study Report to CASA, Child's Tribe, RCWAC representative, and Child's Attorney

When the child's CASA, an Indian child's tribal representative, a RCWAC representative, or the child's attorney has been notified of a scheduled adoption committee and declined to participate as an adoption committee member pursuant to OAR 413-120-0050, he or she:

- (1) May request a copy of the adoption home studies for the potential adoptive resources selected for consideration by the adoption committee at least seven business days prior to the scheduled adoption committee;
- (2) May provide input for the adoption committee's consideration; and

(3) Must return all written information to the Department no later than the date of the scheduled adoption committee.

Stat. Auth.: ORS 409.225, 418.005, 419B.035
Stats Implemented: ORS 409.225, 418.005, 419B.035
Hist.: CWP 4-2006(Temp), f. & cert. ef. 2-6-06 thru 7-31-06; CWP 7-2006(Temp), f. & cert. ef. 4-13-06 thru 7-31-06; CWP 18-2006, f. & cert. ef. 8-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-070-0520

Purpose

The Department must develop, document, and implement a permanency plan for every child placed in the Department's *legal custody* for *substitute care* placement. The Department has four permanency plans from which to choose for a child. The four permanency plans, in order of preference, are: reunification with a parent; adoption, including adoption by a child's relative; legal guardianship, including guardianship with a child's relative; and APPLA. The purpose of these rules, OAR 413-070-0520 to 413-070-0565, is to describe the responsibilities of the Department in case planning for the appropriate use of APPLA.

Stat. Auth.: ORS 418.005
Stats Implemented: ORS 418.005
Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-070-0524

Definitions

The following definitions apply to these rules, OAR 413-070-0520 to 413-070-0565:

(1) "APPLA" means Another Planned Permanent Living Arrangement, a permanency plan for a stable secure living arrangement for a child that includes building relationships with significant people in the child's life that may continue after substitute care. APPLA is the least preferred permanency plan of the four permanency plan options for a child and is appropriate only in very limited circumstances.

(a) "Planned" means the arrangement is intended, designed, and deliberate.

(b) "Permanent" means enduring and stable.

(2) "Caregiver relationship" means a relationship between a person and a child that meets the requirements of all of the following subsections:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age.

(b) The person had physical custody of the child or resided in the same household as the child and provided the child on a daily basis with the love, nurturing, and other necessities required to meet the child's psychological and physical needs.

(c) The child depended on the relationship to meet the child's needs.

(d) A caregiver relationship does not include a relationship between a child and a person who is an unrelated foster parent of the child unless the relationship continued for a period of at least twelve consecutive months.

(3) "Case plan" means a written, goal oriented, time limited individualized plan for the child and the child's family, developed by the Department and the parents or legal guardians, to achieve the child's safety, permanency, and well being.

(4) "Certifier" means a Department employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether to recommend approval of the operation of a relative care or foster home, and monitors the compliance of a relative care or foster care home with Child Welfare certification standards.

(5) "Child" means a person under 18 years of age.

(6) "Committee facilitator" means a Department staff member appointed to facilitate a permanency or adoption committee meeting. The facilitator is a member of the committee and is responsible for ensuring all of the following:

(a) The meeting is held according to the requirements of Oregon Administrative Rules.

(b) Individuals who are not committee members and are invited to and attend the meeting are:

(A) Informed of the responsibilities of the committee and the confidentiality of information presented during the meeting;

(B) Allowed to present information appropriate for consideration in the permanency or adoption recommendation for the child and his or her siblings; and

(C) Excused in a timely manner.

(c) Thorough and accurate documentation of the committee recommendations.

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(7) "Compelling reason" means a convincing and persuasive justification why an action or decision would not be in a child's best interests.

(8) "Department" means the Department of Human Services, Child Welfare.

(9) "Designee" means an individual whom the designator directly and immediately supervises, or an individual with equal or greater management responsibility than the designator.

(10) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated children or young adults who are placed in the home by the Department.

(11) "Independent living housing subsidy" means a payment to assist in covering the cost of room, board, or other monthly expenses made to an eligible individual who is in the care and custody of the Department and living independently.

(12) "Indian child" means any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(13) "Legal custody" means a legal relationship between a person, agency, or institution and a child that imposes on the person, agency, or institution the duties and authority of the child's legal custodian.

(14) "Legal guardian" means a person or agency that has the duties and authority of a parent with legal custody to make decisions concerning a child, including but not limited to the following:

(a) Authorize surgery and other extraordinary treatment for the child;

(b) Authorize the child to enlist in the armed forces of the United States;

(c) Consent to the adoption of the child; and

(d) Make other decisions of substantial legal significance concerning the child, but a guardian is not a conservator of the child's property or estate.

(15) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(16) "Permanency committee" means a group of at least three individuals, who are responsible for making a recommendation regarding a child's permanency plan when the child likely is not returning to his or her parent.

(a) A permanency committee must include three individuals, approved by the child welfare program manager or designee, none of whom has a current personal or professional relationship to the child or potential placement resource. These approved committee members:

(A) Must include at least one individual who is a Department staff member;

(B) Must include a Department staff member appointed as the committee facilitator; and

(C) May include one or two individuals who are community partners.

(b) Each of the three permanency committee members approved under subsection (a) of this section must meet the requirements of all of the following paragraphs:

(A) Be knowledgeable about adoption and permanency issues;

(B) Be knowledgeable of the importance of lifelong family attachment and cultural connections; and

(C) Must represent more than one local child welfare office when there are two or more Department staff members on the permanency committee.

(17) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(18) "Permanent foster care" means the out of home placement of a child in which there is a long-term foster care contract between each substitute caregiver and the Department approved by the juvenile court under which the substitute caregiver commits to raise a child in substitute care until the age of majority and be accessible to and supportive of the child

into adulthood, until the court determines that APPLA - permanent foster care is no longer the appropriate permanency plan for the child.

(19) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(20) "Refugee child" means, as defined under ORS 418.925, 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, sex, sexual orientation, 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, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(21) "Relative caregiver" means a person who operates a Department approved home providing care for a related child or young adult placed into the home by the Department.

(22) "Substitute care" means the out-of-home placement of a child who is in the legal or physical custody and care of the Department.

(23) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(24) "Young adult" means a person 18 to 20 years of age who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005, 418.925, 419A.004(17)

Stats Implemented: ORS 418.005, 418.925, 419A.004(17)

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-070-0536

When APPLA May Be Considered

(1) The Department may consider APPLA as a permanency plan for a child or young adult only if the Department has determined that there is a compelling reason that it is not in the best interests of the child to implement one of the following preferred permanency plans, listed in order of preference:

(a) Placement with a parent;

(b) Placement in an adoptive home which includes permanent placement with a fit and willing relative through the adoption; or

(c) Placement with a legal guardian which includes permanent placement with a fit and willing relative as a guardian.

(2) The Department considers and must develop a permanency plan based on the individual safety, well-being, and permanency needs of a child.

(3) For purposes of implementing an APPLA permanency plan, the Department must document and submit to the court the compelling reason that it is not in the best interests of the child to implement a more preferred permanency plan in circumstances that include, but are not limited to the following:

(a) The child is an older teen, who has had an explanation and understands the permanency plan prior to rejecting all of the more preferred permanency plans.

(b) The child's tribe has identified an APPLA as the preferred plan for an Indian child.

(c) The adult with whom the child has formed a permanent attachment currently is unable or unwilling to adopt the child or become the child's guardian.

(d) A child 14 years of age or older is unwilling to consent to adoption.

(4) The examples provided in section (3) of this rule are not intended to eliminate from consideration any more preferred permanency plan for a child in substitute care. Each child's permanency plan is based on the best interests and individual needs and circumstances of the child and determined on an individual basis. A child's age or disability is never a disqualifier for a more preferred permanency plan.

Stat. Auth.: ORS 109.328, 418.005

Stats Implemented: ORS 109.328, 418.005

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Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-070-0540

Consideration of APPLA as a Child's Permanency Plan

The Department determines that an APPLA is the permanency plan for a child or young adult when all of the following requirements are met:

(1) The caseworker and supervisor review the APPLA plan and document:

(a) The compelling reason why each of the more preferred permanency plans is not in the child or young adult's best interests; and

(b) The basis that an APPLA plan is the most appropriate permanency plan for the child or young adult.

(2) The caseworker must convene a team of individuals, knowledgeable about the child or young adult's needs, to consider an APPLA permanency plan for the child or young adult when it appears that the child or young adult cannot be reunified with a parent, placed for adoption, or placed with a legal guardian.

(a) The team must include:

(A) The child or young adult, unless the child or young adult refuses or is unable to participate in planning;

(B) The court appointed special advocate, if one has been appointed;

(C) A child or young adult's attorney;

(D) A tribal representative, if the child is an ICWA child; and

(E) A member of the RCWAC, if the child is a refugee child.

(b) In addition the team may include, but is not limited to:

(A) The child or young adult's parents (unless their parental rights have been terminated or their participation in the meeting would be harmful to the child or young adult);

(B) The child or young adult's substitute caregiver;

(C) The substitute caregiver's certifier;

(D) Relatives;

(E) Persons with a caregiver relationship; and

(F) Other persons with significant involvement in the child or young adult's life.

(3) The team must:

(a) Identify and consider how an APPLA permanency plan meets the child or young adult's needs and best interests and the requirements of OAR 413-070-0536(1);

(b) Provide the child or young adult and the child or young adult's parents an opportunity to identify available permanency resources;

(c) Consider the parents' acceptance of APPLA as a permanency plan and their desire for continued contact with the child or young adult;

(d) Consider how the child or young adult's substitute caregiver is able to meet the child or young adult's needs, and establish and continue cultural connections; and

(e) Consider each of the more preferred permanency plans described in OAR 413-070-0536(1).

(4) After the team has complied with section (3) of this rule, and when APPLA is the recommended permanency plan the team must document the recommended permanency plan and how the plan assures the safety and well-being of the child or young adult, achieves permanency for the child or young adult, and provides the child or young adult with support in adulthood. The recommended permanency plan may be one of the two APPLA permanency plans only when the plan is the most appropriate permanency plan for the child or young adult, and addresses the child or young adult's permanency, safety, and well being needs.

(5) When APPLA — permanent foster care is recommended as the most appropriate permanency plan for a child or young adult, the caseworker must meet separately with the substitute caregiver and the child to:

(a) Assess interest in and commitment to a permanent foster care agreement with each substitute caregiver as long as APPLA - permanent foster care is the permanency plan for the child; and

(b) Review the requirements, responsibilities, and approval process for the permanent foster care agreement with each substitute caregiver.

Stat. Auth.: ORS 418.005, 419.937, 419.941, 419A.004(17)

Stats Implemented: ORS 418.005, 419.937, 419.941, 419A.004(17)

Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-070-0550

Review and Approval of an APPLA Permanency Plan

(1) The caseworker must schedule a permanency committee within 30 days of the recommendation of the team described in OAR 413-070-0540(2).

(2) When a permanency committee has been scheduled, the Department must notify and invite all of the following individuals to present information to the permanency committee:

(a) The caseworker and caseworker's supervisor;

(b) The child or young adult's attorney;

(c) The court appointed special advocate (CASA) for the child;

(d) A tribal representative if the child is an Indian child; and

(e) A member of the RCWAC if the child is a refugee child.

(3) The individuals in section (2) may provide the Department names of other individuals who have significant information regarding the child's needs and request that the Department invite the other individuals to present information to the permanency committee.

(4) Information may be presented by any person invited to the permanency committee in person, by telephone, through other electronic communication, or in writing.

(5) The permanency committee may seek clarifying and request additional information during the presentations.

(6) When presentations are completed, the child's attorney, CASA, the tribal representative, the member of the RCWAC, and any other individual invited under section (3) of this rule, are excused from the permanency committee. The child's caseworker and the caseworker's supervisor remain for the completion of the permanency committee but do not participate in making the committee recommendation.

(7) The permanency committee must review all information presented to the permanency committee and make a recommendation regarding a permanency plan of APPLA for the child.

(8) After the permanency committee, the committee facilitator must provide written documentation of the permanency committee's recommendation to the child welfare program manager or designee within three business days of the scheduled permanency committee.

(9) The child welfare program manager or designee responsible for making the decision on behalf of the Department may attend the committee meeting, listen, and ask for clarifying or additional information, but may not have been a participating member of the committee.

(10) The child welfare program manager or designee must:

(a) Consider the recommendations of the permanency committee;

(b) Within 3 business days, make a decision whether a permanency plan of APPLA is appropriate for the child and, if the plan is APPLA-Permanent Foster Care, whether the substitute caregiver is appropriate; and

(c) Provide notice of the decision to the caseworker within one business day following a decision under subsection (b) of this section.

(11) The caseworker must notify all of the following individuals within one business day following receipt of the notice received under subsection (9)(c) of this rule:

(a) The child or young adult,

(b) The child or young adult's substitute caregiver;

(c) The child or young adult's attorney;

(d) The child or young adult's CASA;

(e) The tribal representative, when the child is an Indian child; and

(f) The member of the RCWAC, when the child is a refugee child.

(12) Any individual receiving notice under section (9) of this rule, as well as the caseworker and caseworker's supervisor, may request a review of the decision made by the child welfare program manager or designee by submitting a written request to the District Manager within seven calendar days of the notification required under section (10) of this rule.

(13) Within 14 calendar days of the notification required under section (10) of this rule, the District Manager must review the decision of the child welfare program manager or designee.

(14) In conducting the review under section (12) of this rule, the District Manager may consider the information submitted to the child welfare program manager or designee from the permanency committee, and may consider additional relevant information. Upon completing the review, the District Manager must provide written notice to the caseworker of the child or young adult, the caseworker's supervisor, and any other party who requested the review, that either:

(a) The child welfare program manager or designee's decision is affirmed, and the caseworker is directed to reconvene the team described in OAR 413-070-0540(2) to reconsider the child or young adult's permanency options; or

(b) The child welfare program manager or designee's decision is reversed, the APPLA plan is recommended, and the caseworker is directed to proceed with the APPLA plan.

(15) After any review has been completed, within 30 days of the decision to approve an APPLA permanency plan under section (9) of this rule, or when a decision made under section (9) of this rule was subject to review

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and the decision to approve an APPLA permanency plan under section (13) of this rule has been made, the caseworker must request a permanency hearing before the court, requesting the court to consider and approve the APPLA plan. At the court hearing the caseworker must:

(a) Recommend that the court issue an order approving the APPLA plan;

(b) Set forth the compelling reasons why it would not be in the best interests of the child or young adult to return home, be placed for adoption, or be placed with a guardian;

(c) Set forth a timetable for the child or young adult's placement in another planned permanent living arrangement;

(d) Set forth the reasonable services the Department may offer each parent to meet the best interests of the child or young adult until a more preferred permanency plan is achieved, the child reaches the age of majority, reaches independence, or the juvenile court relieves the Department of legal custody of the child or young adult; and

(e) Set forth the type and amount of parent-child and child-sibling contact and involvement until a more preferred permanency plan is achieved, the child reaches age of majority, reaches independence, or the juvenile court relieves the Department of legal custody of the child or young adult.

(f) When the court previously has ordered or the Department recommends that no contact be allowed between parent and child or child and sibling, the caseworker must request that the court issue a standing protective order, including the reasons why no contact is allowed.

(16) When the APPLA plan does not receive approval at any time during the process described in this rule, within 30 days the caseworker must:

(a) Inform the child or young adult, the child or young adult's substitute caregivers, the child or young adult's parents, the child or young adult's attorney, the child's court appointed special advocate, and other persons with significant involvement in the child or young adult's life; and

(b) Reconvene the team described in OAR 413-070-0540(2) to reconsider the child or young adult's other permanency options.

Stat. Auth.: ORS 418.005, 419A.004(17)

Stats Implemented: ORS 418.005, 419A.004(17)

Hist.: CWP 17-2009, f. & cert. ef. 11-3-09; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-110-0100

Purpose

These administrative rules, OAR 413-110-0100 to 413-110-0150, describe the Department's case planning responsibility to maintain and support lifelong sibling relationships for a child in the legal custody of the Department whose permanency plan is guardianship or adoption.

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 8-2006, f. & cert. ef. 5-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-110-0110

Definitions

The following definitions apply to these rules, OAR 413-110-0100 to 413-110-0150:

(1) "Adoptive Resource" means an individual or individuals selected as the adoptive family for a child and the selection has not been subject to an administrative review, or if subject to a review, has been sustained by that review.

(2) "Child" means a person under 18 years of age.

(3) "CASA" means a court appointed special advocate, a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419A.170.

(4) "Committee facilitator" means a Department staff member appointed to facilitate a permanency or adoption committee meeting. The facilitator is a member of the committee and is responsible for ensuring all of the following:

(a) The meeting is held according to the requirements of Oregon Administrative Rules;

(b) Individuals who are not committee members and are invited to and attend the meeting are:

(A) Informed of the responsibilities of the committee and the confidentiality of information presented during the meeting;

(B) Allowed to present information appropriate for consideration in the permanency or adoption recommendation for the child and his or her siblings; and

(C) Excused in a timely manner.

(c) Thorough and accurate documentation of the committee recommendations.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Designee" means an individual whom the designator directly and immediately supervises, or an individual with equal or greater management responsibility than the designator.

(7) "Indian child" means any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Permanency committee" means a group of at least three individuals, who are responsible for making a recommendation regarding a child's permanency plan when the child likely is not returning to his or her parent.

(a) A permanency committee must include three individuals, approved by the child welfare program manager or designee, none of whom has a current personal or professional relationship to the child or potential placement resource. These approved committee members ---

(A) Must include at least one individual who is a Department staff member;

(B) Must include a Department staff member appointed as the Committee Facilitator; and

(C) May include one or two individuals who are community partners.

(b) Each of the three permanency committee members approved under subsection (a) of this section must meet the requirements of all of the following paragraphs:

(A) Be knowledgeable about adoption and permanency issues;

(B) Be knowledgeable of the importance of lifelong family attachment and cultural connections; and

(C) Must represent more than one local child welfare office when there are two or more Department staff members on the permanency committee.

(9) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(10) "Refugee child" means, as defined under ORS 418.925, 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, sex, sexual orientation, 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, sex, sexual orientation, nationality, or membership in a particular group or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person in order to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(11) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children's or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the child's legal or biological parent.

Stat. Auth.: ORS 418.005, 418.925, 418.937, 418.945, 419B.192

Stats. Implemented: ORS 418.005, 418.925, 418.937, 418.945, 419B.192

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 8-2006, f. & cert. ef. 5-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-110-0120

Values

(1) The Department values the preservation of the relationships of *siblings* (defined in OAR 413-110-0110) when in the best interests of the children, recognizing these relationships as the family relationships that can be the longest lasting.

(2) The Department values the placement of *siblings* with the same substitute care provider or adoptive family whenever possible and when it is in the best interests of the children to do so.

(3) If separation of *siblings* occurs in foster care, the Department views the separation as temporary and will work to reunite separated *siblings* when it is in the best interests of the children to do so.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

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Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 8-2006, f. & cert. ef. 5-1-06; Suspended by CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-110-0130

Consideration of Sibling Placement

The Department's first priorities for placement of a child in the legal custody of the Department are placement with relatives and with siblings.

(1) When any child in the legal custody of the Department is separated from one or more siblings in substitute care, the Department must make diligent efforts to place the siblings together in substitute care, so long as it is in the child's best interests, regardless of each child's permanency plan.

(a) The caseworker must document the efforts to place siblings together in substitute care in the Department's information system.

(b) If siblings are placed separately in substitute care, the Department must ensure that the children have the opportunity for continuing contact unless contact is not in the best interest of the child or one or more of the siblings.

(2) When a caseworker, in consultation with the caseworker's supervisor, is considering the permanent separation of siblings for whom adoption or guardianship is the permanency plan, the caseworker must schedule a permanency committee.

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 8-2006, f. & cert. ef. 5-1-06; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-110-0132

Consideration of Sibling Separation

(1) When a permanency committee has been scheduled under OAR 413-100-0130, the Department must notify and invite all of the following individuals to present information to the permanency committee.

(a) The caseworker for the child and for each sibling;

(b) The caseworker's supervisor for the child and for each sibling;

(c) The attorney for the child and for each sibling;

(d) The CASA for the child and for each sibling;

(e) When a child is an Indian child, a tribal representative; and

(f) When a child is a refugee child, a member of the RCWAC.

(2) The individuals in section (1) may provide the Department names of other individuals who have significant information regarding the child's or a sibling's needs and request that the Department invite the other individual to present information to the permanency committee.

(3) Information may be presented by any individual invited to the permanency committee in person, by telephone, through other electronic communication, or in writing.

(4) The permanency committee may seek clarifying and request additional information during the presentations.

(5) When presentations are completed, the children's attorneys, each CASA, the tribal representative, the member of the RCWAC, and any other individual invited under section (2) of this rule, are excused from the permanency committee. The caseworker and caseworker's supervisor for the child and each sibling remain for the completion of the permanency committee but do not participate in making the committee recommendation.

(6) The permanency committee must review all information presented to the permanency committee and consider all of the following:

(a) The current and lifelong needs of the child and of each sibling;

(b) The existence of the child's significant emotional ties to each sibling;

(c) The child's and each sibling's needs for all of the following:

(A) Physical and emotional safety;

(B) Ability to develop and maintain current and lifelong connections with the child's family;

(C) Continuity and familiarity;

(D) Appropriate educational, developmental, emotional, and physical support;

(E) Stability; and

(F) Maintaining his or her identity and cultural and religious heritage.

(7) After completing the review under section (6) of this rule, the permanency committee makes one of the following recommendations regarding placement of siblings:

(a) Separation of the child from one or more siblings is not in the best interest of the child and the caseworker must continue to make efforts to place the child with siblings for the purpose of adoption or guardianship; or

(b) Separation of the child from one or more siblings for the purpose of adoption or guardianship is in the best interests of the child.

(8) After the permanency committee, the committee facilitator must provide written documentation of the permanency committee's recommendation to the child welfare program manager or designee within three business days of the scheduled permanency committee.

(9) The child welfare program manager or designee responsible for making the decision on behalf of the Department may attend the committee meeting, listen, and ask for clarifying or additional information, but may not have been a participating member of the committee.

Stat. Auth.: ORS 418.005, 418.937, 418.945, 419B.192

Stats. Implemented: ORS 418.005, 418.937, 418.945, 419B.192

Hist.: CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-110-0140

Decision, Notification, and Review of a Sibling Placement Decision

(1) The child welfare program manager or designee must:

(a) Consider the recommendations of the permanency committee;

(b) Within 3 business days, make a decision whether permanent separation of siblings for the purposes of guardianship or adoption is appropriate for the child and the identified siblings; and

(c) Provide notice of the decision to the caseworker within one business day following the decision made under subsection (b) of this section.

(2) The caseworker must notify the following individuals within one business day following receipt of the notice received under subsection (1)(c) of this rule:

(a) The attorney for the child and for each sibling;

(b) The CASA for the child and for each sibling;

(c) When the child is an Indian child, a tribal representative; and

(d) When the child is a refugee child, a member of the RCWAC.

(3) Any individual receiving notice under section (2) of this rule, as well as the caseworker and caseworker's supervisor, may request a review of the decision made by the child welfare program manager or designee by submitting a written request to the District Manager within seven calendar days of the notification required in section (2) of this rule.

(4) Within 14 calendar days of notification required in section (2) of this rule, the District Manager must review the decision of the child welfare program manager.

(5) In conducting the review, the District Manager may consider the information submitted to the child welfare program manager from the permanency committee, and may consider additional, relevant information. Upon completing the review, the District Manager must provide written notice to each child's caseworker, supervisor, and any other party who requested the review that either:

(a) The child welfare program manager or designee's decision is affirmed; or

(b) The child welfare program manager or designee's decision is reversed and directing the caseworker's further actions to be taken regarding sibling placement planning.

Stat. Auth.: ORS 418.005, 418.937, 418.945, 419B.192

Stats. Implemented: ORS 418.005, 418.937, 418.945, 419B.192

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 48-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-110-0150

Sibling Placement and Permanency Planning

(1) When separation of siblings has occurred as a result of a Department action or decision pursuant to OAR 413-110-0140(1)(b) or 413-110-0140(5), the Department's efforts to identify a potential guardian or identify and recruit a potential adoptive resource must include recruitment efforts to identify a potential guardian or adoptive resource who can initiate and maintain connections between the child and one or more siblings, unless such a connection is not in the best interests of the child or one or more siblings.

(2) When one or more of the following circumstances exists, and it is in the best interest of the child, the caseworker must make efforts to identify a potential guardian or identify and recruit an adoptive resource that also may be able to become the guardian of or adoptive resource for the child's siblings:

(a) The child's mother is pregnant.

(b) The child's siblings, who are also in substitute care, do not yet have a permanency plan of adoption.

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

ADMINISTRATIVE RULES

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 14-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Adopted: 413-120-0840, 413-120-0850, 413-120-0860, 413-120-0870

Rules Amended: 413-120-0800, 413-120-0810, 413-120-0830

Rules Suspended: 413-120-0820, 413-130-0150, 413-130-0160, 413-130-0170, 413-130-0180

Subject: These rules about permanency plans, adoptive placement selection, and placement decisions for children in the care and custody of the Department, are being changed because the Department is redesigning the structure by which it makes these decisions. These rules set the requirements and responsibilities for the Department around changing a child's permanency plan, consideration of adoption as a permanency option, consideration and selection of prospective adoptive resources, the selection decision and review process for an adoption placement selection, and post adoptive selection placement and support for the adoptive child and family. These rules are also being amended, adopted, and suspended to bring the Department into compliance with the Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949 - 3981) and ORS 419B.192 which direct that during the placement of a child consideration of the child's relatives and placement of siblings together are the first preference for permanency. These rules are also being amended, adopted, and suspended to explain the Department's responsibility for decision-making in permanency planning and adoption placement selection.

OAR 413-120-0800 about the purpose of the Department's rules (OAR 413-120-0800 to 413-120-0880) for adoption placement, supervision, and support when a child in the custody of the Department is placed in the home of an adoptive resource, OAR 413-120-0810 about the definitions used in OAR 413-120-0800 to 413-120-0880, and OAR 413-120-0830 about the actions the Department takes prior to placing a child with an adoptive resource are being amended; OAR 413-120-0820 about the values the Department followed when making adoptive placement decisions is being suspended; OAR 413-120-0835 about when the transition of a child into an adoptive home may begin is being amended and renumbered from OAR 413-120-0075; OAR 413-120-0840 about when an exception to the timeline for the child's placement with an adoptive resource may occur, OAR 413-120-0850 about the signed agreement required when an adoption is considered a legal risk adoption, OAR 413-120-0860 about the supervision the Department must provide after a child is placed with an adoptive resource, and OAR 413-120-0870 about the Department's actions when a child's placement into an adoptive home is disrupted are being adopted; and OAR 413-120-0880 about the circumstances under which the Department may not delay the placement of a child for adoption is being amended and renumbered from OAR 413-120-0045 to clarify the Department's policy for making an adoption placement selection for a child in the custody of the Department when that child has a permanency plan of adoption, include definitions used throughout these rules (OAR 413-120-0800 to 413-120-0880), and reflect current Department terminology, policy, and practices. OAR 413-120-0810 about the definitions used in OAR 413-120-0800 to 413-120-0880 also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-120-0830 also is being amended to describe the circumstances under which the Department reconsiders other adoptive resources and the policies the Department must comply with when a child is placed with an adoptive resource outside of Oregon. OAR 413-120-0835 also is being amended and renumbered to state when the transition of a child into an adoptive may begin and how the Department makes an exception to delay the start of the transition. OAR 413-120-0840 also is being adopted to state how the Department makes an exception to the start of the transition of a child into an adoptive home sooner than allowed under

OAR 413-120-0835. OAR 413-120-0850 also is being adopted to state when the Department and the adoptive resource must sign a Legal Risk Agreement and what that agreement must include. OAR 413-120-0860 also is being adopted to state when the Department must engage in post-placement supervision of a child and adoptive home and what that supervision must encompass. OAR 413-120-0870 also is being adopted to explain when the disruption of an adoption may occur and the actions the Department takes in response to such a disruption. OAR 413-120-0880 also is being amended and renumbered to state the criteria under which the Department may not delay an adoptive placement and how the adoptive resource may file a complaint about a delayed placement.

OAR 413-130-0150, 413-130-0160, 413-130-0170, and 413-130-0180 about an adoptive family's eligibility for post adoption services when the adoptive family adopted a child through the Department are being suspended because their relevant provisions have been incorporated into other Department administrative rules, policies, and procedures and their other provisions do not properly belong in administrative rule.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-120-0800

Purpose

These rules, OAR 413-120-0800 to 413-120-0880, describe the responsibilities of the Department for adoption placement, supervision, and support when a child in the custody of the Department is placed in the home of an adoptive resource. For a case involving the international adoption of a child in the custody of the Department, Child Welfare Policy I-G.1.14, "International Adoption and Special Immigrant Juvenile Status" OAR 413-120-0900 to 413-120-0980 may also apply.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0810

Definitions

The following definitions apply to OAR 413-120-0800 to 413-120-0880:

(1) "Adoption agency" means an organization providing the services under any one of the following subsections:

(a) Identifying a child for adoption and arranging an adoption.

(b) Securing the necessary consent to relinquishment of parental rights and to adoption.

(c) Performing a background study on a child or a home study on a prospective adoptive parent and reporting on such a study.

(d) Making determinations of the best interests of a child and the appropriateness of adoption placement for the child.

(e) Monitoring a case after placement until final adoption.

(f) When necessary because of disruption before final adoption, assuming custody and providing childcare or other social services for the child pending an alternative placement.

(2) "Adoption placement selection" means a decision made by the Department that an individual or individuals have been identified as the adoptive family for the child.

(3) "Adoptive resource" means an individual or individuals selected as the adoptive family for a child and the selection has not been subject to an administrative review, or if subject to a review, has been sustained by that review.

(4) "Child" means a person under 18 years of age.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Designee" means an individual whom the designator directly and immediately supervises, or an individual with equal or greater management responsibility than the designator.

(7) "Disruption" means a decision that the adoptive resource will not proceed with the legalization of the adoption.

(8) "Legal risk adoptive placement" means a placement with a substitute caregiver designated by the Adoption Program as the child's adoptive resource after the Department has made a formal decision:

(a) To legally free the child for adoption; and

(b) To finalize the adoption with the adoptive resource when the child becomes legally free.

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(9) "Permanency committee" means a group of at least three individuals, who are responsible for making a recommendation regarding a child's permanency plan when the child likely is not returning to his or her parent.

(a) A permanency committee must include three individuals, approved by the child welfare program manager or designee, none of whom has a current personal or professional relationship to the child or potential placement resource. These approved committee members:

(A) Must include at least one individual who is a Department staff member;

(B) Must include a Department staff member appointed as the committee facilitator; and

(C) May include one or two individuals who are community partners.

(b) Each of the three permanency committee members approved under subsection (a) of this section must meet the requirements of all of the following paragraphs:

(A) Be knowledgeable about adoption and permanency issues;

(B) Be knowledgeable of the importance of lifelong family attachment and cultural connections; and

(C) Must represent more than one local child welfare office when there are two or more Department staff members on the permanency committee.

(10) "Post-placement supervision" means the supervision of a child following placement with an adoptive resource.

(11) "Relative" has the meaning given that term in OAR 413-070-0063.

(12) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 24-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 32-2003, f. & cert. ef. 10-1-03; CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0820

Values

(1) The Department should seek the active participation of adoptive families in decision-making for the children placed in their homes for adoption.

(2) Creating legal relationships in a timely manner is important in achieving permanency for a child.

(3) During the supervision period, the Department or its contracted agents will monitor safety standards and a child's physical, mental, and emotional needs.

(4) The Department should complete all activities necessary to achieve finalization of the adoption plan in the most timely way possible.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 24-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 32-2003, f. & cert. ef. 10-1-03; Suspended by CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0830

Department Actions Prior to Placement

(1) When circumstances occur or conditions are made known to the Department after the adoption selection but prior to placement with an adoptive resource that give the local child welfare office reason to believe the adoptive resource is no longer appropriate for the child or his or her siblings, the local child welfare office must request approval from the Adoption Program Manager to reconsider the selection and to direct consideration toward other potential adoptive resources.

(2) Post-placement supervision and medical coverage for the child must be arranged prior to placement of the child in the home of the adoptive resource.

(3) When the adoptive resource is located in a state other than Oregon, the court and the receiving state must agree to the adoptive placement prior to the physical placement of the child. The conditions of both of the following subsections also must be met prior to a placement in a state other than Oregon:

(a) Approval as required by Child Welfare Policy I-B.3.4.2, "Interstate Compact on the Placement of Children" OAR 413-040-0200 to 413-040-0330 has been received; and

(b) The Department must contract with a private adoption agency willing to accept payment as authorized by the Department for supervision of the placement.

(4) When the adoptive resource is located out of country, the requirements of Child Welfare Policy I-G.1.14, "International Adoption and Special Immigrant Juvenile Status" OAR 413-120-0900 to 413-120-0980 may also apply.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 24-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 32-2003, f. & cert. ef. 10-1-03; CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0840

Early Transition

(1) The child's caseworker, with supervisory approval, may request an exception to the timeline for the child's placement with the adoptive resource described in section (1) of this rule when the requirements in all of the following subsections are met:

(a) It is in the best interests of the child;

(b) There are no indications that the adoption placement selection will be contested or that a review will be requested; and

(c) If the child is to be placed outside of Oregon, the requirements regarding a placement in a state other than Oregon under OAR 413-120-0830 have been met.

(2) Upon approval of the child welfare program manager, a written request for early transition must be sent to the Adoption Program Manager or designee who makes the final decision.

(3) The decision whether to approve early transition must be documented in the child's case plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0850

Legal Risk Adoptive Placement

When the Department determines a placement is a legal risk adoptive placement, the Department and the adoptive resource must sign a Legal Risk Agreement which indicates all of the following:

(1) The Department cannot guarantee the child will become legally freed for adoption.

(2) The Department actively is pursuing a plan to legally free the child for adoption.

(3) The adoptive resource agrees to provide temporary care to the child with the understanding that the child may be removed from the home if the child does not become legally free for adoption.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0860

Placement and Post-placement Supervision

(1) The child's transition to and placement with the adoptive resource may begin following the review period outlined in OAR 413-120-0060, unless approval has been obtained for an early transition in accordance with 413-120-0840.

(2) Post placement supervision must include all of the following:

(a) Face to face contact with the child in accordance with OAR 413-080-0067;

(b) Assessment of the child's safety and well being in accordance with OAR 413-080-0059;

(c) Providing services and support to ensure adoptive resource's ability to meet the adoption home standards described in OAR 413-120-0246.

(d) Providing support to the adoptive resource in the process of the completion and submission of the adoption assistance application; and

(e) Documentation from the supervising worker which includes the supervision reports and the recommendation for finalization of the adoption.

(3) When the child is placed through an in-state private agency, the Department must provide supervision of the placement and, when applicable, must coordinate support services with the in-state private agency.

(4) When it becomes known to the Department that there are significant changes to the adoptive resource's situation, including changes in the family structure, the Department may require an updated adoption home study prior to making a determination to proceed with finalization of the adoption.

(5) The standard length of supervision of an adoptive placement is six months, and can include the time the adoptive resource was the child's substitute caregiver. If it is in the child's best interests to proceed with finalization, this time period can be waived upon approval of all of the following individuals:

(a) The child's caseworker;

(b) The supervising worker if other than the caseworker;

(c) The supervisor of each worker; and

(d) The Adoption Program Manager or designee.

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(6) Prior to finalization of the adoption the Department must ensure that the adoptive resource is made aware of both of the following:

(a) Available post-legal services; and

(b) The ability to seek voluntary supportive services through the Department to stabilize an adoption and promote lifelong permanency for children.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0870

Disruption

(1) Prior to finalization of the adoption, when the local child welfare office determines the adoptive resource is no longer appropriate for the child or his or her siblings, approval must be obtained from the Adoption Program Manager for a disruption.

(2) A disruption may occur at the request of the adoptive resource. In this case, the Department must make efforts to offer services to prevent a disruption if it determines that it is in the best interests of the child.

(3) After the disruption of a child's placement in the home of an adoptive resource, the child's caseworker must consult with his or her supervisor, the child's team, and individuals with significant adoption experience to staff the case and gain a comprehensive understanding of the issues leading to the disruption.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-130-0150

Purpose

The purpose of these rules is to establish criteria and eligibility for post legal adoption services for adoptive families who adopted a child through the State Office for Services to Children and Families.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; Suspended by CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-130-0160

Definition

(1) "Oregon Post Adoption Resource Center (ORPARC):" Contracted service provider whose services to post adoptive families include information and referral, training, support groups and networks, assistance with planning for respite care, lending library, follow up tracking, advertising and promotional efforts, and an advisory committee.

(2) "Post Legal Adoption" is the period of time after an adoption is legalized.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 25-2001, f. 6-29-01 cert. ef. 7-1-01; Suspended by CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-130-0170

Values

(1) Freeing a special needs child for adoption through SOSCF presupposes a commitment by the agency to the child until the child reaches the age of 18 years or emancipation, whichever comes first. SOSCF assumes an obligation to the child, the adoptive parent(s) and to the family as a whole to maintain the placement through the delivery of adoption preservation services.

(2) Families who adopt special needs children are often challenged by the exceptional current and future needs of their children, and may require specialized services after the adoption is legalized.

(3) SOSCF's response to adoptive families (who adopted through SOSCF) returning to the agency for support shall be provided in a way that is sensitive to the issues unique to adoption.

(4) Any child who is unable to grow up safely in his or her own home should be assured the opportunity to become a valued and permanent member of another safe family that understands and responds to his or her needs.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 25-2001, f. 6-29-01 cert. ef. 7-1-01; Suspended by CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-130-0180

Procedures

Except where OAR 413-030-0100 through 413-030-0130, (Child Protective Services Eligibility administrative rules) apply, SOSCF shall not determine eligibility for post legal adoption services to families who have adopted a child through SOSCF on the basis of risk assessment factors or

the vulnerability scale, but shall base it on the needs of the adoptive child and family. Post legal adoptive services will be determined by the availability of SOSCF and community resources.

(1) Prior to the finalization of an adoption, the child's SOSCF worker shall inform the approved family of the existence of post adoptive resources including the Oregon Post Adoption Resource Center (ORPARC) and the availability of services directly from the SOSCF branch, and document this on the Statement of Verification of the Voluntary Adoption Registry.

(2) Case responsibility for post-legal adoptive services shall be determined through branch administration.

(3) Adoptive families eligible to receive SOSCF services shall sign the CF 304, "Service Application," to access SOSCF services. SOSCF services and other community services may include, but are not limited to referrals to SOSCF contracted services or other agency or community services, (such as ORPARC, counseling, adoptive parent's support group, family resource or unity meeting, respite care, temporary out-of-home care or residential treatment).

(4) SOSCF may process post adoption applications for adoption assistance or renegotiated agreements through the adoption assistance coordinator without the need for casework services.

(5) SOSCF shall refer members of the adoption triad (adult adoptee, adoptive family and birth family) seeking non-identifying or identifying information to the adoption registry and assisted search programs through the State Office for Services to Children and Families.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 25-2001, f. 6-29-01 cert. ef. 7-1-01; Suspended by CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

Rule Caption: Changing OARs affecting Child Welfare programs.

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Rules Adopted: 413-120-0225, 413-120-0243, 413-120-0246

Rules Amended: 413-120-0190, 413-120-0195, 413-120-0220, 413-120-0240

Rules Suspended: 413-120-0200, 413-120-0210, 413-120-0230, 413-120-0250, 413-120-0255, 413-120-0260, 413-120-0265, 413-120-0270, 413-120-0275, 413-120-0280, 413-120-0285, 413-120-0290, 413-120-0300, 413-120-0310

Subject: These rules about permanency plans, adoptive placement selection, and placement decisions for children in the care and custody of the Department, are being changed because the Department is redesigning the structure by which it makes these decisions. These rules set the requirements and responsibilities for the Department around changing a child's permanency plan, consideration of adoption as a permanency option, consideration and selection of prospective adoptive resources, the selection decision and review process for an adoption placement selection, and post adoptive selection placement and support for the adoptive child and family. These rules are also being amended, adopted, and suspended to bring the Department into compliance with the Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949 - 3981) and ORS 419B.192 which direct that during the placement of a child consideration of the child's relatives and placement of siblings together are the first preference for permanency. These rules are also being amended, adopted, and suspended to explain the Department's responsibility for decision-making in permanency planning and adoption placement selection.

OAR 413-120-0190 about the purpose of the Department rules regarding adoption applications and standards for adoptions (OAR 413-120-0190 to 413-120-0246), OAR 413-120-0195 about the definitions used in these rules, OAR 413-120-0220 about the application process for an adoption home study, and OAR 413-120-0240 about when and how the Department notifies an applicant who has submitted an adoption application packet are being amended; OAR 413-120-0200 about how the Department processed adoption applications, OAR 413-120-0210 about how the Department worked with applicants who had an adoption certification with a non-contracted

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public or private adoption agency, and OAR 413-120-0230 about how the Department reviewed and determined whether to approve an adoption application are being suspended; OAR 413-120-0225 about the conditions that require the Department to undertake a special staffing, suspension, or termination of the Department's adoption home study application process; OAR 413-120-0243 about how the Department prioritizes adoption home studies; and OAR 413-120-0246 about the standards the home of an adoptive applicant must meet are being adopted to clarify the Department's policy for how an individual applies for and receives a home study to adopt a child in the legal custody of the Department, and the standards for an adoptive home, include definitions used throughout these rules (OAR 413-120-0190 to 413-120-0246), and reflect current Department terminology, policy, and practices. OAR 413-120-0190 also is being amended to more accurately reflect the purpose of these rules. OAR 413-120-0195 also is being amended to provide current definitions for terms used in these rules. OAR 413-120-0220 also is being amended to state the application requirements for an individual applying for an adoption home study. OAR 413-120-0225 also is being adopted to explain conditions under which the Department may staff, suspend, or terminate the adoption home study application process. OAR 413-120-0240 also is being amended to state when the Department must send written notice of the status of an adoption home study application. OAR 413-120-0243 also is being adopted to describe the Department's prioritization of adoption home studies to comply with state law (ORS 419B.192). OAR 413-120-0246 also is being adopted to state the Department's standards for home studies and the additional information required for an individual wishing to adopt a child in the custody of the Department.

OAR 413-120-0250 about the procedures by which Department and partner agency employees could obtain adoptive home studies, OAR 413-120-0255 about Department values, OAR 413-120-0260 about the definitions used in these rules (OAR 413-120-0250 to 413-120-0290), OAR 413-120-0265 about which adoptive home studies the Department could prepare, OAR 413-120-0270 about adoptive home studies prepared by Oregon private licensed adoption agencies who were members of a coalition, OAR 413-120-0275 about which children Department employees could be considered as adoptive resources for, OAR 413-120-0280 about the adoption placement selection process, OAR 413-120-0285 about the training required for adoptive resource applicants, and OAR 413-120-0290 about the confidentiality of adoptive home studies are being suspended as their relevant provisions have been moved to other Department rules and their other provisions more properly belong in Department procedural documents, need not appear in administrative rules, or no longer accurately reflect Department terminology, policy, or practice.

OAR 413-120-0300 and 413-120-0310 about the minimum standards for adoptive homes in Oregon are being suspended as their relevant provisions have been moved to other Department rules and their other provisions more properly belong in Department procedural, need not appear in administrative rules, or no longer accurately reflect Department terminology, policy, or practice.

Rules Coordinator: Annette Tesch — (503) 945-6067

413-120-0190

Purpose

These rules, OAR 413-120-0190 to 413-120-0246, describe the Department's requirements for an individual to apply for and to receive a home study to adopt a child in the legal custody of the Department, and the standards for an adoptive home. These rules do not apply to the Department's requirements for an international adoption of a child in the legal custody of the Department.

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0195

Definitions

The following definitions apply to OAR 413-120-0190 to 413-120-0246:

(1) "Adoption agency" means an organization providing the services under any one of the following subsections:

(a) Identifying a child for adoption and arranging an adoption.

(b) Securing the necessary consent to relinquishment of parental rights and to adoption.

(c) Performing a background study on a child or a home study on a prospective adoptive parent and reporting on such a study.

(d) Making determinations of the best interests of a child and the appropriateness of adoption placement for the child.

(e) Monitoring a case after placement until final adoption.

(f) When necessary because of disruption before final adoption, assuming custody and providing childcare or other social services for the child pending an alternative placement.

(2) "Adoption home study" means a document which includes an assessment of a potential adoptive resource to determine the suitability of the potential adoptive resource to make a lifelong, permanent commitment to adopt a child in the Department's custody, in the custody of a public welfare agency in another state, or under the jurisdiction of a juvenile court in another state.

(3) "Adoptive resource" means an individual or individuals selected as the adoptive family for a child and the selection has not been subject to an administrative review, or if subject to a review, has been sustained by that review.

(4) "Child" means a person under 18 years of age.

(5) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of adoption;

(b) Has cared for the child for at least the past 12 consecutive months; and

(c) Has been approved by the Department for consideration as a potential adoptive resource for the child and when appropriate, the child's siblings who are also in substitute care but have not lived with the foster parent for 12 consecutive months.

(6) "Department" means the Department of Human Services, Child Welfare.

(7) "Designee" means an individual whom the designator directly and immediately supervises, or an individual with equal or greater management responsibility than the designator.

(8) "Emotionally significant relationship" means a child's connection to a parent or other caregiver that endures over time, establishes an interpersonal connection, and aids in the development of a sense of self.

(9) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated children or young adults who are placed in the home by the Department.

(10) "Indian child" means any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(11) "Relative" has the meaning given that term in OAR 413-070-0063.

(12) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children's or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the child's legal or biological parent.

(13) "SNAC" means special needs adoption coalition, a coalition of private licensed adoption agencies who recruit and screen adoptive applicants, prepare adoption home studies, and counsel families who want to adopt a child.

(14) "SNAC adoption agency" means a special needs adoption coalition agency licensed by the Department.

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0200

Adoption Home Study Application Process

(1) The Department places a child in its care for the purposes of adoption. The Department will refer an individual who is not interested in adopting a child in the custody of the Department to a contracted private agency. An applicant to adopt a child from the Department must satisfy the requirements of each of the following subsections. The applicant must:

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(a) Be at least 21 years of age, unless a Department program manager or designee has approved an applicant between the ages of 18 through 20 years, to become a relative caregiver. An applicant who is an "Indian" (as defined by the Indian Child Welfare Act and Department Policy I-E.2.1, Placement of Indian Children (OAR 413-070-0100 through 413-070-0260)) may be 18 years of age or above.

(b) Meet the adoptive home approval requirements in Department Policy II-B.1, Certification Standards for Foster Parents, Relative Caregivers, and Pre-Adoptive Parents (OAR 413-200-0301 through 413-200-0396).

(c) As well as all adult members of the applicant's household, consent to a criminal offender information records check and be found suitable for adoption approval pursuant to OAR 413-120-0400 through 413-120-0470.

(d) Be able to provide for the safety of the child, including protection from all individuals and situations that brought the child into the care of the Department. The Department must assess the applicant for safety by means including, but not limited to, a criminal records check in accordance with OAR 413-120-0200 to 413-120-0470 and a family history, including a child abuse and domestic violence history.

(e) Be able to acknowledge and meet the individual special needs of the child;

(f) Provide evidence of the capacity to accept and raise an adopted child as the applicant's own child to maturity.

(g) Successfully complete Foundations training provided by the Department or an equivalent training from a licensed child-caring agency approved by the Department. This training prepares the applicant for adoption by covering the topics in paragraphs (A) through (G) of this subsection. With supervisory approval, the adoption worker may develop an individual training plan with the applicant based on an assessment of the previous training or experience of the applicant.

(A) The effects of abuse (physical, sexual, emotional) and neglect on a child;

(B) The effects of drugs and alcohol on a child;

(C) The effects of moves and transition on a child;

(D) The significance of the birth family, including grief and loss issues;

(E) Openness in adoption;

(F) The attachment process and attachment difficulties; and

(G) Positive behavior management.

(2) The Department or a contracted private agency must accept applications from couples (married or unmarried) or an individual (married or unmarried).

(3) The Department must refer an applicant who is a current or former employee of DHS or a partner agency to a contracted private agency to obtain an adoptive home study. A contracted private agency may not study its own employee or board member, but must refer the applicant to another contracted private agency.

(4) An applicant must submit an application to the Department or a contracted private agency on the Application for Approval to Care for a Child in DHS Custody Form, CF 1260A.

(5) If the applicant has lost permanent custody of a child through relinquishment or termination of parental rights, the adoption worker and supervisor must staff the case with the Department program manager to determine whether to proceed with the application.

(6) The Adoption Home Study packet consists of the following materials:

(a) Application for Approval to Care for a Child in DHS Custody, CF 1260A;

(b) Adoptive Family Information and Placement Preference, CF 1266;

(c) Family Financial Report, CF 1291;

(d) Medical Report A, CF 1257A;

(e) Medical Report B, CF 1257B;

(f) Mental Health Information, CF 1258 (if applicable);

(g) Consent for Criminal Records and Fingerprint Check, CF 1011F;

(h) Five applicant references, using CF 1255;

(i) Progressive Family Assessment, CF 1269, or Progressive Family Assessment Current Caretaker Adoption Study, CF 1269A;

(j) Progressive Family Assessment Confidential & Third Party Information, CF 1269B; and

(k) Copy of marriage certificate or divorce verification as applicable.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.280 & 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0210

Applicants who have Adoption Certification with a Non-Contracted Public or Private Adoption Agency

(1) The Department or a contracted private agency may conduct a home study for any individual who has submitted an application for consideration or is currently under the supervision of another public or private adoption agency. The applicant must:

(a) Meet all adoptive home certification requirements specified in OAR 413-120-0200;

(b) Sign a release of information allowing ongoing communication with the other public or private adoption agency; and

(c) Sign a release of information allowing the Department to obtain a copy of the adoption file of the individual.

(2) The Department may consider an applicant's previous denial, revocation, suspension, or relinquishment of a license or certificate to provide services to children, the elderly, or individuals with disabilities as sufficient reason not to continue with the application process or home study.

(3) The Department or a contracted private agency may not conduct home studies for any individual who does not meet the requirements of Certification Approval by the Department as defined in OAR 413-200-0314.

(4) At any time during the application, training, and home study process with the Department or contracted private agency, when the applicant comes under active consideration for a potential adoptive placement by another public or non-contracted private agency, his or her application with the Department or contracted private agency may be placed on hold for up to two years.

(5) When an applicant is identified as a potential adoptive placement for a child in the care of the Department, the Department must provide placement supervision and support for the purposes of monitoring child safety.

(6) If the applicant receives placement supervision and support services from a contracted private agency, the applicant is responsible for any and all fees that may be applied by that agency.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.280 & 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0220

Home Studies by the Department

The Department may prioritize applications according to the types of homes most needed for children who are eligible for adoption or becoming eligible for adoption, and may give priority to completing home studies for applicants who are:

(1) A relative applying to adopt a specific child;

(2) A current caregiver applying to adopt a specific child; or

(3) An applicant interested in adopting a child with a special need for whom there are few or no available approved homes.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.280 & 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0225

Conditions that Require Special Staffing, Suspension, or Termination of the Department's Adoption Home Study Application Process

The Department may require a special staffing, suspension, or termination of the adoption home study application process when the conditions in any one of the following sections are met:

(1) When an individual who has lost permanent custody of a child has submitted an application packet, unless the District Manager or designee has approved proceeding with the adoption application.

(2) If, at any time during the application, training and home study process, the applicant is considered as an adoptive resource by another public or non-contracted private agency, the Department may discontinue the application process for up to two years.

(3) The Department may terminate the application process and deny an application at any time when one or more of the following subsections applies:

(a) Information regarding the applicant is sufficient to determine the applicant cannot meet adoption home standards described in OAR 413-120-0200;

(b) An applicant's license or certificate to provide services to children, the elderly or individuals with disabilities has previously been denied, revoked, or suspended;

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- (c) The applicant falsifies or omits information;
- (d) The applicant does not respond to the inquiries and requests for information within the timelines established by the Department, but in no case to exceed 90 days from the date of application; or
- (e) When the applicant does not authorize a signed, valid release of information for the purpose of consideration as an adoptive resource.

Stat. Auth.: ORS 418.005, 418.280, 418.285
Stats. Implemented: ORS 418.005, 418.280, 418.285
Hist.: CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0230

The Department Application And Approval Process

- (1) The Department must review received applications.
- (2) When the Department has completed the entire application and home study process, the Department (based on an evaluation of the application and home study information according to the requirements of OAR 413-120-0200(1)) may either approve the home with a positive recommendation, or decline to present the study at an adoption committee and deny the request of the applicant to be an adoptive resource.

(a) The adoption worker may not present a study at adoption committee without a positive recommendation.

(b) If the adoption worker has produced a study without a positive recommendation, and the Department program manager determines the worker should present the study to the adoption committee, the Department program manager may request the Adoptions program manager make an exception to the requirement for a positive recommendation.

(3) If an applicant does not provide timely and appropriate response to the inquiries and requests for information from the Department, the Department may terminate the process and deny the request to be an adoptive resource. An applicant who applies to adopt a specific child must provide documentation and information requested by the Department according to time lines established by the Department, but in no case to exceed 90 days from the date of application.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.280 & 418.285
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0240

Application Status Notification

The Department must send written notice of the status of the application to an individual who has submitted an adoption application packet when the requirements of any one of the following sections are met:

(1) The adoption home study is not initiated within 180 calendar days from the date the application is signed;

(2) The Department has terminated the application process;

(3) The Department determines whether an adoption home study has been approved or disapproved; or

(4) An approved adoption home study is removed from the pool of available homes.

Stat. Auth.: ORS 418.005, 418.280, 418.285
Stats. Implemented: ORS 418.005, 418.280, 418.285
Hist.: SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0243

Prioritization of an Adoption Study

(1) The Department gives priority to considering a child's relatives as a potential adoptive resource and to keeping siblings together.

(2) For the purposes of keeping siblings together in adoption, the Department may give priority to the relative, guardian, or adoptive resource of a child's sibling when the sibling currently is living in the home of the relative, guardian, or adoptive resource.

(3) The Department must make diligent efforts to search for individuals identified in sections (1) and (2) of this rule to identify each adoptive resource that can sustain a child's lifelong connections to his or her extended family and culture.

(4) When the Department is not assessing an individual described in section (1) or (2) of this rule, the Department may complete an adoption home study for an applicant meeting the conditions of at least one of the following subsections:

(a) A current caretaker;

(b) An applicant interested in adopting a specific child when the Department determines it is in the best interest of the child to consider the applicant;

(c) An applicant interested in a child with unique needs for whom an adoptive resource is needed; or

(d) An applicant who the Department has determined has an emotionally significant relationship to the child as described in OAR 413-120-0760.

Stat. Auth.: ORS 418.005, 418.280, 418.285
Stats. Implemented: ORS 418.005, 418.280, 418.285
Hist.: CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0246

Standards for an Adoptive Home

To be approved to adopt a child in the legal custody of the Department, an adoptive applicant must:

(1) Have a home study written, amended, or updated within the 12 months prior to the adoption selection that recommends the adoptive applicant as a potential adoptive resource. The home study demonstrates that the applicant and home meet the requirements of at least one of the following subsections:

(a) When the home study is prepared by the Department, Child Welfare Policy II-B.1, "Certification Standards for Foster Parents, Relative Caregivers and Pre-Adoptive Parents" OAR 413-200-0301 to 413-200-0396;

(b) When the home study is prepared by a private agency for an Oregon resident, Child Welfare Policy II-C.1.3, "Licensing Adoption Agencies" OAR 413-215-0401 to 413-215-0481; or

(c) When the home study is prepared by an out-of-state agency, Child Welfare Policy I-B.3.4.2, "Interstate Compact on the Placement of Children" OAR 413-040-0200 to 413-040-0330. In addition, the Department:

(A) When the home study is prepared by another state's agency, may request additional information.

(B) Must contract with a private adoption agency willing to accept payment as authorized by the Department for supervision of the placement.

(2) Demonstrate the knowledge, skills, and ability to meet, without agency oversight, the current and lifelong needs of the child and his or her siblings for all of the following:

(a) Physical and emotional safety;

(b) Developing and maintaining connections to the child's family;

(c) Continuity and familiarity;

(d) Appropriate educational, developmental, emotional and physical support;

(e) Integration into the family;

(f) Stability and permanency; and

(g) Maintaining his or her identity and cultural and religious heritage.

(3) Provide evidence of successful completion of a training program approved by the Department, unless the Adoption Program Manager has approved an exception.

Stat. Auth.: ORS 418.005, 418.280, 418.285
Stats. Implemented: ORS 418.005, 418.280, 418.285
Hist.: CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0250

Purpose

The purpose of these rules is to establish procedures by which employees of SOSCF and employees of partner agencies may obtain adoptive home studies. If SOSCF is in the process of preparing an employee's home study or has a completed home study on the effective date of these rules, SOSCF shall continue to provide adoption services until the next update is due. SOSCF shall refer the applicant to SNAC for the update.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 6-2000, f. & cert. ef. 2-24-00; SOSCF 31-2000, f. & cert. ef. 11-7-00; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0255

Values

(1) Commitment to Clients: Our primary responsibility is to protect children and promote their welfare.

(2) SOSCF employees must be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgement.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 6-2000, f. & cert. ef. 2-24-00; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0260

Definitions

(1) "Partner Agency(ies)" means all DHS divisions and offices, and where the local SOSCF office is co-housed or located in close proximity with a non-DHS state, county, city, or private not for profit agency, means

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those offices as well. Refer to 413-120-0270 for more details about making this determination.

(2) **“Special Needs Adoption Coalition (SNAC)”** means Oregon private licensed adoption agencies who are members of a coalition. SNAC recruits, screens, prepares and counsels families for the adoption of Oregon children in the custody of SOSCF.

(3) **“Employee”** means for the purposes of these rules, unless otherwise specified, a trial service or permanent employee of SOSCF, and an employee of a partner agency.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 6-2000, f. & cert. ef. 2-24-00; SOSCF 31-2000, f. & cert. ef. 11-7-00; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0265

Adoptive Home Studies: SOSCF

(1) SOSCF shall not prepare adoptive home studies for SOSCF employees, or employees of partner agencies.

(2) SOSCF may prepare adoptive home studies for temporary employees or contracted individuals of SOSCF, or partner agencies.

(a) An adoption worker from a branch office other than the office of the SOSCF or partner agency employee shall prepare such studies.

(b) If, prior to placement of a child with a temporary employee or contracted individual of SOSCF or a partner agency on a legal risk or regular adoptive placement, the temporary employee or contracted individual is hired by SOSCF or the partner agency into a permanent position, SOSCF shall contract with a SNAC private agency of the employee's choosing to prepare or complete the employee's home study.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 6-2000, f. & cert. ef. 2-24-00; SOSCF 31-2000, f. & cert. ef. 11-7-00; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0270

Adoptive Home Studies: SNAC

(1) SOSCF shall refer an SOSCF or partner agency employee seeking adoption of a child/ren in SOSCF custody to the headquarters of the Special Needs Adoption Coalition (SNAC) who shall supply the employee with a current list of SNAC agencies, the services they provide, and their geographic coverage.

(2) If the worker and supervisor are unable to determine whether a non-SOSCF agency meets the definition of “partner agency” they shall refer the matter to the branch manager. The branch manager shall consult with the manager of the Adoptions Services Unit if the branch manager needs assistance in determining whether the non-SOSCF agency is a “partner agency.”

(3) After the employee selects a SNAC agency to prepare his or her adoptive home study, the employee and the selected SNAC agency shall notify the Office Manager of the Adoption Services Unit of the selection so that the office manager can arrange for a contract for the SNAC adoption agency to provide adoption services to the employee.

(4) Upon receipt of a signed contract from the selected SNAC agency agreeing to provide adoption services to the employee, SOSCF shall pay the SNAC agency an adoption application fee of up to \$150 and the current established home study fee per fee schedule noted in OAR 413-140-0020(1)(a)(B) (SOSCF Policy I-G.4, Independent Adoptions).

(5) The SNAC agency may charge the employee for reasonable travel expenses, for example commercial carrier fares; parking and garage fees; necessary taxi, airport shuttle or bus fares; private car mileage allowances not to exceed the standard state-approved mileage rate; and actual and necessary expenses for lodging and meals. The employee shall reimburse travel expenses directly to the SNAC agency performing the service. The employee may request reimbursement of travel expenses through the Adoption Assistance Program, per OAR 413-130-0080(1) through (4) as Non-Recurring Payment for Adoption Expenses.

(6) If the SNAC agency does not approve the employee as an adoptive resource, the SNAC agency shall submit an abbreviated home study report outlining the reasons for its conclusion to the SOSCF Adoption Services Unit Manager.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 6-2000, f. & cert. ef. 2-24-00; SOSCF 31-2000, f. & cert. ef. 11-7-00; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0275

Branch Considerations

(1) SOSCF shall not consider any employee, as defined in OAR 413-120-0260(3) as an adoptive resource for a child served by the branch in

which the SOSCF employee works or Partner Agency employee is associated, in order to avoid a conflict of interest, or the appearance of a conflict of interest, except under the following conditions:

(a) The child is a relative of the employee;

(b) The employee has been providing foster care to the child; or

(c) By approval of the SOSCF Adoption Services Unit Manager.

(A) The employee shall inform the branch manager that he/she wants an exception;

(B) The branch manager shall refer this request to the Adoption Services Unit Manager;

(C) After consultation with the branch manager, the Adoption Services Unit Manager shall decide whether the exception is warranted, based on criteria that includes, but is not limited to, the nature of the employee's relationship to the child. The Adoption Services Unit Manager shall inform the employee and branch manager of the decision.

(2) For any child specific study, the SNAC agency shall contact the child's SOSCF worker for information on the strengths and needs of the child. The child's worker shall provide the SNAC agency with a strengths and needs based assessment, including the type of adoptive family most likely to be able to meet the child's needs.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 6-2000, f. & cert. ef. 2-24-00; SOSCF 31-2000, f. & cert. 11-7-00; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0280

Adoption Placement Selection Process

(1) The SNAC agency that completed the employee's adoption home study shall present the employee's study at a sensitive issue adoption committee meeting.

(2) If the SOSCF sensitive issue adoption committee selects the employee as the adoptive resource for the child, SOSCF shall contract with the SNAC agency for placement, supervision, finalization, and disruption services.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 6-2000, f. & cert. ef. 2-24-00; SOSCF 31-2000, f. & cert. ef. 11-7-00; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0285

Training

SNAC shall require the employee applicant(s) to participate in pre-service training provided or approved by SOSCF to cover topics (1) through (7) of this rule to prepare applicant(s) for adoption. Exceptions to this requirement shall be rare. If the applicant wants to request an exception, the applicant shall request an exception from the SNAC agency that prepared the home study. The request for exception shall demonstrate why the applicant believes he or she has sufficient knowledge of the issues addressed in pre-service training topics (1) through (7) of this rule. If the SNAC agency concurs, the SNAC agency shall request an exception from the SOSCF Adoption Services Unit Manager. The SOSCF Adoption Services Unit Manager may make an exception to the pre-service training requirement based on an assessment of the applicant's previous training or experience, if additional training is not necessary because the applicant has demonstrated sufficient knowledge of the issues addressed in pre-service training.

(1) The effects of abuse (physical, sexual, emotional) and neglect on children.

(2) The effects of drugs and alcohol on children.

(3) The effects of moves and transition on children.

(4) The significance of the birth family, including grief and loss issues.

(5) Openness in adoption.

(6) The attachment process and attachment difficulties; and

(7) Positive behavior management.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 6-2000, f. & cert. ef. 2-24-00; SOSCF 31-2000, f. & cert. ef. 11-7-00; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0290

Confidentiality

(1) The SNAC agency shall submit the employee's home study to SOSCF Central Adoption Services Unit. Central Adoption Services Unit shall treat the employee home study as a “Sensitive Case” and highly confidential, retain the original home study, and provide copies to adoption committee members for consideration as an adoptive resource in accord

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with OAR 413-120-0000 through 413-120-0080 (SOSCF Policy I-G.1.5, Adoption Placement Selection).

(2) When a child's SOSCF worker reviews a copy of the home study and does not select the employee for Adoption Committee consideration, the SOSCF worker shall have his or her copy shredded.

(3) An adoption committee member who has the home study of an employee who was considered but not selected by an Adoption Committee, shall have his or her copy of the home study shredded.

(4) The SNAC agency preparing the home study may review the study with the employee for accuracy and completeness of those portions of the study that do not contain confidential information, such as information from third parties. If the employee requests a copy of the home study, the SNAC agency shall refer the employee to the SOSCF Adoption Services Unit Manager or designee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 6-2000, f. & cert. ef. 2-24-00; SOSCF 31-2000, f. & cert. ef. 11-7-00; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0300

Purpose

The purpose of these rules is to establish minimum standards for adoptive homes in Oregon. An adoptive home study, completed or approved by a licensed Oregon adoption agency or the State Office for Services to Children and Families, shall assess the potential adoptive parent's compliance with each of the minimum standards set out in OAR 413-120-0310. Nothing in these rules precludes SOSCF or a licensed Oregon adoption agency from utilizing additional standards for adoptions for which the agency provides the legal consent to adopt. In addition to the minimum standards set forth in these rules, SOSCF adoption applications and home studies should refer to SOSCF policy II-B.1, Certification Standards for Foster, Adoptive and Family Group Homes.

Stat. Auth.: HB 2004

Stats. Implemented: ORS 109.309(5)(a)(C)

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0310

Minimum Standards for Adoptive Homes

Basic professional home study investigation requirements and minimum standards for adoptive applicants have been established for the purpose of ensuring to the court that prospective adoptive parents meet minimum standards for adoptive homes as set forth in these rules.

(1) A proposed adoptive home shall have living conditions that promote the health, safety and well-being of an adoptive child or children:

(a) There shall be an on-site observation of the prospective home to verify living, health and safety conditions;

(b) The home site to be evaluated shall be identified with a detailed physical description and a full legal address;

(c) The total number of children to be adopted by prospective adoptive parents shall not exceed their capacity to adequately care for and parent the children:

(A) The director of the licensed Oregon adoption agency working with the applicants, or in the case of a proposed SOSCF adoption home study, the SOSCF branch manager of the county where the potential adoptive parents reside, shall convene a committee to review and approve the adoption application of parents who provide full time physical care for eight or more children under the age of eighteen. The findings and recommendations of the review committee shall be included in the home study report;

(B) Adoptive applicants, including stepparents and relatives, who provide full time physical care for eight or more children under the age of eighteen shall not be eligible for waiver of a home study.

(d) Relationship of all members of the household to an adoptive child shall be evaluated.

(2) Proposed adoptive parents and other members of the household shall maintain a lifestyle and have a personal history, that demonstrates the capacity to meet emotional and physical needs of adoptive children:

(a) Married or unmarried prospective adoptive parents should have a relationship of sufficient duration to give evidence of stability, and will be evaluated for their ability to parent adoptive children;

(b) Each adoptive applicant who requests an adoption home study under ORS 109.304(1) and 109.309(5)(a)(C) shall consent to a check of the State Office for Services to Children and Families Child Protection records and a criminal records check. Criminal records information shall also be requested and must be provided for other household members who are over eighteen years old. Criminal record information shall be furnished accord-

ing to administrative rules adopted by the State Office for Services to Children and Families to implement ORS 181.537 and 181.525.

(c) There shall be financial ability within the household to ensure the stability and financial security of the family and to meet the needs of children to be adopted;

(d) Prospective adoptive parents must demonstrate an understanding of adoption issues and a preparedness for adoptive parenting.

(3) Prospective adoptive parents must evidence that their physical and mental health is sufficient to be able to undertake and follow through with responsibilities of parenthood of adoptive children.

(a) A complete physical and mental health history, and proof of a physical examination performed within one year of date of the request for a home study, shall be required;

(b) Health history will include review of alcohol and other substance abuse;

(c) The applicant will provide medical releases to the adoption agency necessary to obtain medical information.

Stat. Auth.: HB 2004

Stats. Implemented: ORS 109.309(5)(a)(C)

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

Rule Caption: Changing OARs affecting Child Welfare programs.

Adm. Order No.: CWP 16-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Adopted: 413-120-0050, 413-120-0053, 413-120-0057, 413-120-0521, 413-120-0541, 413-120-0551, 413-120-0560, 413-120-0570, 413-120-0590, 413-120-0595, 413-120-0700, 413-120-0710, 413-120-0720, 413-120-0730, 413-120-0740, 413-120-0745, 413-120-0750, 413-120-0760

Rules Amended: 413-120-0000, 413-120-0010, 413-120-0020, 413-120-0033, 413-120-0035, 413-120-0040, 413-120-0060, 413-120-0500, 413-120-0510

Rules Suspended: 413-120-0015, 413-120-0030, 413-120-0080, 413-120-0520, 413-120-0530, 413-120-0540

Rules Ren. & Amend: 413-120-0045 to 413-120-0880, 413-120-0075 to 413-120-0835, 413-120-0550 to 413-120-0580

Subject: These rules about permanency plans, adoptive placement selection, and placement decisions for children in the care and custody of the Department, are being changed because the Department is redesigning the structure by which it makes these decisions. These rules set the requirements and responsibilities for the Department around changing a child's permanency plan, consideration of adoption as a permanency option, consideration and selection of prospective adoptive resources, the selection decision and review process for an adoption placement selection, and post adoptive selection placement and support for the adoptive child and family. These rules are also being amended, adopted, and suspended to bring the Department into compliance with the Fostering Connections to Success and Increasing Adoptions Act of 2008 (122 Stat. 3949 – 3981) and ORS 419B.192 which direct that during the placement of a child consideration of the child's relatives and placement of siblings together are the first preference for permanency. These rules are also being amended, adopted, and suspended to explain the Department's responsibility for decision-making in permanency planning and adoption placement selection.

OAR 413-120-0000 about the purpose of the rules (OAR 413-120-0000 to 413-120-0060) regarding the Department's responsibilities when making an adoption placement selection for a child in the custody of the Department with a permanency plan of adoption, OAR 413-120-0010 about the definitions used in these rules (OAR 413-120-0000 to 413-120-006), OAR 413-120-0020 about how the Department determines the adoptive placement options for a child in the Department's custody with a permanency plan of adoption, OAR 413-120-0033 about the release of information documents potential adoptive resources must provide the Department and the confidentiality of information provided to adoption committees, OAR 413-120-0035 about who is invited to attend an adoption committee meeting and who may attend the meeting, OAR 413-120-0040

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about the Department's responsibilities when considering and selecting potential adoptive resources, and OAR 413-120-0060 about who may request review of the Department's adoption selection decision and how the Department conducts such a review are being amended; OAR 413-120-0015 about the values the Department considers when making adoptive placement selections, OAR 413-120-0030 about the two types of committees the Department utilized to review cases and identify placement selections, and OAR 413-120-0080 about who may provide legal consent for an adoption of a child in Department custody are being suspended; OAR 413-120-0045 about the efforts the Department must make to find an adoptive home for a child in the custody of the Department with a permanency plan of adoption is being amended and renumbered to OAR 413-120-0880; OAR 413-120-0050 about how the individuals invited to attend an adoption committee can indicate they will attend the meeting and the information the Department provides to committee attendees and participants, OAR 413-120-0053 about the responsibilities of the individuals attending or participating in an adoption committee, and OAR 413-120-0057 about how the Department makes an adoption selection and what notifications the Department provides about that selection are being adopted; and OAR 413-120-0075 about the Department's responsibilities when transitioning a child into an adoptive home is being amended and renumbered to OAR 413-120-0835 to clarify the Department's policy for making an adoption placement selection for a child in the custody of the Department when that child has a permanency plan of adoption, include definitions used throughout these rules (OAR 413-120-0000 to 413-120-0060), and reflect current Department terminology, policy, and practices. OAR 413-120-0010 about the definitions used in OAR 413-120-0000 to 413-120-0060 also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-120-0020 also is being amended to describe how the Department determines the adoptive placement options for a child in the Department's custody with a permanency plan of adoption. OAR 413-120-0033 also is being amended to state which release of information documents potential adoptive resources must provide the Department and how the confidentiality of information provided to adoption committees is maintained. OAR 413-120-0035 also is being amended to describe who the Department invites to attend an adoption committee meeting and how they may participate in the meeting. OAR 413-120-0040 also is being amended to state the Department's responsibilities when considering and selecting potential adoptive resources. OAR 413-120-0050 also is being amended to explain how the individuals invited to attend an adoption committee can indicate they will attend the meeting and the information the Department provides to committee attendees and participants. OAR 413-120-0053 also is being amended to state the responsibilities of the individuals attending or participating in an adoption committee. OAR 413-120-0057 also is being amended to state how the Department makes an adoption selection and to whom the Department provides notifications about the adoption selection and what those notices must contain. OAR 413-120-0060 also is being amended to explain who may request review of the Department's adoption selection decision and how the Department conducts such a review.

OAR 413-120-0500 about the purpose of the search for relatives of a child to be adopted rules (OAR 413-120-0500 to 413-120-0595) and OAR 413-120-0510 about the definitions used in these rules are being amended; OAR 413-120-0520 about the values the Department considered when placing children in adoptive homes, OAR 413-120-0530 about when the Department determines that a diligent search for relatives of a child to be adopted has been completed, and OAR 413-120-0540 about how the Department scheduled, arranged and staffed a committee to consider the current caretaker's interest in being the adoptive resource for the child are being suspended; OAR 413-120-0521 about substitute care being intended as a temporary placement resource for a child, OAR 413-120-0541 about when a foster parent can request consideration as a potential adoptive resource, OAR 413-120-0551 about how a Department caseworker

assesses foster parents under consideration to be classified as current caretakers, OAR 413-120-0560 about the actions the Department caseworker may take once an assessment of foster parents as potential current caretakers is completed, OAR 413-120-0570 about how the Department schedules and conducts a permanency committee to consider whether a foster parent is a potential adoptive resource, OAR 413-120-0590 about how the Department proceeds when a relative is identified for consideration as a potential adoptive resource after a foster parent has been considered and designated as a current caretaker, and OAR 413-120-0595 about when the Department may consider a foster parent as a potential adoptive resource are being adopted; and OAR 413-120-0550 about which individuals may request review of a child welfare program manager's decision not to consider a foster parent as a current caretaker for a child is being amended and renumbered to OAR 413-120-0580 to clarify the Department's policy for when a foster parent requests consideration as a current caretaker for the purpose of consideration as a potential adoptive resource as a part of case planning for a child with a permanency plan of adoption, include definitions used throughout these rules (OAR 413-120-0500 to 413-120-0595), and reflect current Department terminology, policy, and practices. OAR 413-120-0510 about the definitions used in these rules (OAR 413-120-0500 to 413-120-0595) also is being amended to add current and remove outdated definitions of terms used throughout these rules. OAR 413-120-0541 also is being adopted to explain the circumstances under which a foster parent may be considered as a potential adoptive resource and what actions the Department must undertake when making this consideration. OAR 413-120-0550 also is being amended and renumbered to OAR 413-120-0580 to state the timelines for requesting review of decision regarding a foster parent being considered as a potential adoptive resource, who may request the review, and what the request for review must contain. OAR 413-120-0551 also is being adopted to state what elements the Department caseworker must assess when considering a foster parent as a potential adoptive resource and the timeline for completing the assessment. OAR 413-120-0560 also is being adopted to explain the conclusions the Department caseworker may make upon completing an assessment of a foster parent as a potential adoptive resource, the notifications the caseworker must make, and how the foster parent may request review of the caseworker's decision. OAR 413-120-0570 also is being adopted to explain who the Department invites to a permanency committee to consider whether a foster parent is a potential adoptive resource, how information may be presented to the committee, who may remain present after presentations regarding potential adoptive resources are complete, when and how the committee may request additional information, what recommendations the committee may make, when and how the committee facilitator must present recommendations to the child welfare program manager, the timeline for the child welfare program manager to make a decision and the actions the manager must take once the decision is made, and the notifications the Department caseworker must make once the manager has made the decision. OAR 413-120-0580 also is being adopted to explain when and how the Department reviews a child welfare program manager's decision regarding the consideration of a foster parent as a potential adoptive resource, and the notifications the Department must provide when the review is complete. OAR 413-120-0590 also is being adopted to state when the child welfare program manager decides whether to proceed with a foster parent's request for consideration. OAR 413-120-0595 also is being adopted to state the circumstances under which a foster parent may be considered as a potential adoptive resource.

OAR 413-120-0700, 413-120-0710, 413-120-0720, 413-120-0730, 413-120-0740, 413-120-0745, 413-120-0750, and 413-120-0760 about the Department's responsibilities in identifying potential adoptive resources and establishing the priority in which potential adoptive resources will be assessed and considered for a child or identified sibling group for whom adoption is the permanency plan are being adopted to reflect current Department terminology,

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policy, and practices. OAR 413-120-0710 about the definitions used in OAR 413-120-0700 to 413-120-0760 also is being adopted to state current definitions of terms used throughout these rules. OAR 413-120-0720 also is being adopted to state how the Department prioritizes potential placements for the purposes of adoption. OAR 413-120-0730 also is being adopted to state when the Department may consider a foster parent as an adoptive resource. OAR 413-120-0740 also is being adopted to describe how the Department determines whether an emotionally significant relationship exists between a child and an individual other than a relative. OAR 413-120-0745 also is being adopted to explain how a Department decision regarding an individual with an emotionally significant relationship to be considered alone as the potential adoptive resource for a child and his or her siblings may be reviewed, including who may request review, who conducts the review, and the potential outcomes of the review. OAR 413-120-0750 also is being adopted to state the Department methodology and considerations when identifying and recruiting potential adoptive resources for a child. OAR 413-120-0760 also is being adopted to state what a Department caseworker must do and may do when identifying and selecting potential adoptive resources for a child.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-120-0000

Purpose

These rules, OAR 413-120-0000 to 413-120-0060, describe the Department's responsibilities when making an adoption placement selection for a child in the custody of the Department when that child has a permanency plan of adoption.

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0010

Definitions

The following definitions apply to OAR 413-120-0000 to 413-120-0060:

(1) "Adoption committee" means either a Central Office adoption committee or a Local adoption committee.

(2) "ADS" means an Adoption Decision Specialist, who is a Department employee appointed by the Adoption Program Manager to attend an adoption committee and to select an adoptive resource for a child and, when the child has a sibling, the child's siblings. The ADS must meet the requirements of each of the following subsections:

(a) Have significant expertise in the areas of adoption and permanency issues;

(b) Have experience with adoption placement planning;

(c) Be knowledgeable of the importance of lifelong family and cultural connections;

(d) Have no current personal or professional relationship to the child and his or her siblings or potential adoptive resource; and

(e) Have no prior involvement in permanency planning decisions for the child and any sibling considered for adoption.

(3) "Adoption home study" means a document which includes an assessment of a potential adoptive resource to determine the suitability of the potential adoptive resource to make a lifelong permanent commitment to adopt a child in the Department's custody, in the custody of a public welfare agency in another state, or under the jurisdiction of a juvenile court in another state.

(4) "Adoption placement selection" means a decision made by the Department that an individual or individuals have been identified as the adoptive family for the child.

(5) "Adoptive resource" means an individual or individuals selected as the adoptive family for a child and the selection has not been subject to an administrative review, or if subject to a review, has been sustained by that review.

(6) "Adoption worker" means an individual assigned by the Department or another public or private agency to complete an adoption home study and represent the family in the adoption selection process.

(7) "Central office adoption committee" means a group of individuals convened by central office staff to make recommendations to an ADS

regarding adoptive resources for a child. The adoption committee must be composed of at least three individuals.

(a) A central office adoption committee must include:

(A) Three individuals, appointed by the Adoption Program Manager or designee, none of whom has any current personal or professional relationship to the child or potential adoptive resource.

(B) The three individuals:

(i) Must include individuals who are Department staff members, one of whom has been appointed as a committee facilitator; and

(ii) May include one or two individuals who are community partners.

(b) The three central office adoption committee members approved under subsection (a) of this section must meet the requirements of each of the following paragraphs:

(A) Be knowledgeable of adoption and permanency issues;

(B) Be knowledgeable of the importance of a lifelong family attachment and cultural connections; and

(C) When there are two or more Department staff members on the central office adoption committee members, the staff members must represent more than one local child welfare office.

(c) A central office adoption committee also includes all of the following members:

(A) The child's caseworker; and

(B) Each of the following individuals when the individual gives notice to the Department of their intent to attend as a member of the adoption committee:

(i) The child's CASA, if one has been appointed;

(ii) The child's attorney, if one is representing the child;

(iii) When the child is identified as an Indian child, a tribal representative; and

(iv) When the child is identified as a refugee child, a member of the RCWAC.

(8) "Child" means a person under 18 years of age.

(9) "Committee facilitator" means a Department staff member appointed to facilitate a permanency or adoption committee meeting. The facilitator is a member of the committee and is responsible for ensuring all of the following:

(a) That the meeting is held according to the requirements of Oregon Administrative Rules;

(b) Individuals who are not committee members and are invited to and attend the meeting are:

(A) Informed of the responsibilities of the committee and the confidentiality of information presented during the meeting;

(B) Allowed to present information appropriate for consideration in the permanency or adoption recommendation for the child and the child's siblings; and

(C) Excused in a timely manner.

(c) Thorough and accurate documentation of the committee recommendations.

(10) "CASA" means a court appointed special advocate, a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419A.170.

(11) "Current Caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of adoption;

(b) Has cared for the child for at least the past 12 consecutive months; and

(c) Has been approved for consideration by the Department as a potential adoptive resource for the child and when appropriate, the child's siblings who are also in substitute care but have not lived with the foster parent for 12 consecutive months.

(12) "Department" means the Department of Human Services, Child Welfare.

(13) "Designee" means an individual whom the designator directly and immediately supervises, or an individual with equal or greater management responsibility than the designator.

(14) "DHS Staff Member" means any individual who is an employee, volunteer, trainee, or intern of any division within the Department of Human Services.

(15) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated children or young adults who are placed in the home by the Department.

(16) "General applicant" means an individual:

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(a) Who is not a relative or current caretaker or a sibling's current guardian, relative, current caretaker, or adoptive resource with whom the sibling is currently living; and

(b) Has submitted a completed application to adopt a child.

(17) "Indian child" means any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(18) "Local adoption committee" means a group of individuals convened by local child welfare office staff to make recommendations to an ADS regarding adoptive resources for a child. The local adoption committee must be composed of at least three individuals.

(a) A local adoption committee must include:

(A) Three individuals, appointed by the child welfare program manager or designee, none of whom has any current personal or professional relationship to the child or potential placement resource.

(B) The three individuals:

(i) Must include individuals who are Department staff members, one of whom has been appointed as the committee facilitator; and

(ii) May include one or two individuals who are community partners.

(b) The three local adoption committee members approved under subsection (a) of this section must meet the requirements of each of the following paragraphs:

(A) Be knowledgeable of adoption and permanency issues;

(B) Be knowledgeable of the importance of a lifelong family attachment and cultural connections; and

(C) When there are two or more Department staff members on the local adoption committee, must represent more than one local child welfare office.

(c) A local adoption committee also includes each of the following:

(A) The child's caseworker; and

(B) Each of the following individuals when the individual gives notice to the Department of the intent to attend as a member of the local adoption committee:

(i) The child's CASA, if one has been appointed;

(ii) The child's attorney, if is representing the child;

(iii) When the child is identified as an Indian child, a tribal representative; and

(iv) When the child is identified as a refugee child, a member of the RCWAC.

(19) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(20) "Refugee child" means, as defined under ORS 418.925, 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, sex, sexual orientation, 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, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person in order to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(21) "Relative" has the meaning given that term in OAR 413-070-0063.

(22) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children's or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the child's legal or biological parent.

(23) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 418.005, 418.280, 418.285, 418.937, 419B.100, 419B.192

Stats. Implemented: ORS 418.005, 418.280, 418.285, 418.937, 419B.100, 419B.192

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-

2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0015

Values

(1) The best adoption placement selection decisions are always made as the result of a collaborative process.

(2) Adoption selection is an important decision with a lifelong impact.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.280 - 418.285

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 16-1999, f. & cert. ef. 8-12-99; Suspended by CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0020

Placement Selection Options

(1) When the child has a permanency plan of adoption, the caseworker, in consultation with the supervisor and the child's team, may make the adoption placement selection for a child as part of case-planning when the requirements of at least one of the following subsections is met:

(a) The child is identified as an Indian child and the adoption placement selection complies with Child Welfare Policy I-E.2.1, "Placement of Indian Children" OAR 413-070-0100 to 413-070-0260.

(b) The child is identified as a refugee child and the adoption placement selection complies with Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380.

(c) A relative is being considered alone as the potential adoptive resource for a child or identified sibling group, unless subsections (3)(e) and (f) of this rule apply.

(d) When the potential adoptive resource for the child or children is a sibling's current guardian, relative, current caretaker, or adoptive resource with whom the sibling is currently living and is being considered alone.

(e) The Department has conducted a diligent search but has not found any relative or sibling resource as described in subsection (d) of this section available as a potential adoptive resource, and unless subsections (3)(e) and (f) of this rule apply the requirements of one of the following paragraphs is met:

(A) A current caretaker is being considered alone for a child who has been recommended by a permanency committee; or

(B) The child is under six years of age and each potential adoptive resource is a general applicant, unless subsection (2)(c) of this rule applies.

(2) The child's caseworker refers the child to a local adoption committee, unless subsections (3)(e) and (f) of this rule apply, when at least one of the following subsections applies:

(a) The child is six years of age or older;

(b) The child has one or more siblings also being adopted and the potential adoptive resource is not a relative, current caretaker, or sibling resource as described in subsection (1)(d) of this rule;

(c) The identified potential adoptive resources include the child's current foster parent being considered as a general applicant along with other general applicants; or

(d) The caseworker wishes to have the benefit of added expertise in assessing the appropriateness of one or more potential adoptive resources based on the unique needs of the child or identified sibling group.

(3) The child's caseworker refers the child to a central office adoption committee when the requirements of at least one of the following subsections are met:

(a) The potential adoptive resources include more than one relative or other sibling placement resource as described in subsection (1)(d) of this rule.

(b) The potential adoptive resources include:

(A) A relative or a sibling placement resource; and

(B) A current caretaker.

(c) The potential adoptive resources include more than one current caretaker being considered for a sibling group.

(d) The local child welfare office wishes to have the benefit of added expertise in assessing the appropriateness of one or more potential adoptive resources based on the unique needs of the child or identified sibling group.

(e) The potential adoptive resources include a DHS staff member and the requirements of the DHS-060-002, "Conflict of Interest Policy" and the "Conflict of Interest Policy Addendum for CAF Employees" apply.

(f) The potential adoptive resources include a non-DHS staff member with a potential conflict of interest with the Department.

(4) The caseworker may request that the adoption placement selection be made through the use of a local adoption committee rather than by the caseworker, or at a central office adoption committee rather than a local adoption committee after consultation with the supervisor. The request must be approved by both of the following:

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(a) The Child Welfare Program Manager or designee for the use of a local adoption committee; and

(b) The Adoption Program Manager or Adoption Program Assistant Manager or designee for the use of a central office adoption committee.

(5) When an adoption committee is not required, the selection made under section (1) of this rule must be documented and all of the following notifications must occur by the end of the next business day following the adoption placement selection.

(a) The child's caseworker must notify all of the following individuals of the adoption placement selection:

(A) The child's attorney;

(B) The CASA;

(C) When the child is an Indian child, the child's tribe;

(D) When the child is identified as a refugee child, a member of the RCWAC;

(E) The adoption worker or workers; and

(F) The central office Adoption Program.

(b) The adoption workers must notify the potential adoptive resources whether the resource was selected or not.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 418.005, 418.280, 418.285, 419B.192

Stats. Implemented: ORS 418.005, 418.280, 418.285, 419B.192

Hist.: SCF 6-1995, f. & cert. ef. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SCF 9-1997(Temp), f. & cert. ef. 8-15-97; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2007(Temp), f. & cert. ef. 2-26-07 thru 8-24-07; CWP 13-2007, f. & cert. ef. 8-1-07; Administrative correction 9-16-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0030

Adoption Committees

(1) Two types of adoption committees review cases and identify placement selections:

(a) Local or District Permanency/Adoption Committees.

(A) Local offices or Permanency/Adoption Councils shall be responsible for establishing adoption committees. Department staff shall follow any written procedures established by Permanency/Adoption Councils or central office Adoption Services Unit regarding the composition and operation of the Local or District Permanency/Adoption Committees.

(B) If the Local office does not have established procedures for the Local Permanency/Adoption Committee, the Child Welfare program manager or designee shall designate three committee members not involved in the cases to act as the adoption committee. If the Permanency/Adoption Council does not have established procedures for the District Permanency/Adoption Committee, the chair of the Council shall designate three committee members not involved in the cases to act as the District Permanency/Adoption Committee.

(C) The chairperson of the adoption committee shall assure that committee meetings are promptly scheduled and that committee concerns and recommendations are recorded on the CF 0250, "Adoption Selection Report," and sent to the central office Adoption Services Unit within three working days of the committee date.

(b) Central Adoption Committees. The central office Adoption Services Unit shall select staff from the Department, licensed adoption agencies, or knowledgeable community partners to serve on central adoption committees. The central office Adoption Services Unit is responsible for the staff work associated with the operation of central adoption committees. The chairperson will communicate in writing on the CF 250, "Adoption Selection Report," any committee concerns or recommendations to the central office Adoption Services Unit within three working days of the committee date.

(2) The child's worker shall refer the child and potential adoptive homes to the appropriate adoption committee based on the following criteria:

(a) The Department shall refer children who are being considered for placement with a relative family or families as defined in OAR 413-070-0069 to the appropriate adoption committee as required in Child Welfare Policy I-E.1.1, "Working with Relatives Toward Placement of Children", OAR 413-070-0093(2).

(b) Children under six with minimum special needs being placed without siblings will be referred to the Local Permanency/Adoption Council or a District Permanency/Adoption Council committee.

(c) Children six years of age or older, children part of a sibling group, and children with significant special needs will be referred to a central adoption committee.

(d) When a current caretaker is being considered along with other resources for a child, the case will be staffed per Child Welfare Policy I-G.1.1, "Current Caretaker Adoption Planning", OAR 413-120-0540.

(e) Per Employee Home Study rules (Child Welfare Policy I-G.1.3.1, "CAF and Partner Agency Employee Adoption Home Studies", OAR 413-120-0250 to 413-120-0290, employees who are being considered as general applicants or current caretakers shall be referred to the Central Adoption Committee.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.280 - 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; Suspended by CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0033

Confidentiality

(1) To be considered as a potential adoptive resource, each individual must provide a release of information regarding the potential adoptive resource's adoption home study and all identified supporting protected information to be considered by the Department or an adoption committee during the adoption selection.

(2) Each adoption committee member who receives confidential information for consideration and each individual who attends an adoption committee is bound by Oregon statutes regarding confidentiality and Child Welfare Policies I-A.3.2, "Confidentiality of Client Information" OAR 413-010-0000 to 413-010-0075 and I-A.3.3, "Release of Adoption Home Study" OAR 413-010-0081 to 413-010-0086.

Stat. Auth.: ORS 409.225, 418.005, 418.280, 418.285, 418.305, 419A.255

Stats. Implemented: ORS 409.225, 418.005, 418.280, 418.285, 418.305, 419A.255

Hist.: SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0035

Invitation and Attendance at Adoption Committee

(1) The Department must schedule and notify all of the following individuals of the date, time, and location of an adoption committee:

(a) The child's caseworker;

(b) The child's CASA;

(c) The child's attorney;

(d) A tribal representative when the child is an Indian child;

(e) A member of the RCWAC when the child is a Refugee child;

(f) The adoption committee members;

(g) The ADS; and

(h) Individuals invited to present information at an adoption committee.

(2) The Department may invite the following individuals, who may attend and present information regarding the child's current and lifelong needs, to an adoption committee:

(a) The child, on a case by case basis, when the child's caseworker determines attendance by the child is appropriate;

(b) The child's current or previous substitute caregiver, unless the individual is being considered as a potential adoptive resource for the child; or

(c) Any other individual identified by the child's team who has significant information about the current and lifelong needs of the child.

(3) The Department must provide the committee facilitator with the names of each individual invited to the adoption committee.

(4) A potential adoptive resource may provide additional information through the adoption worker regarding the potential adoptive resource's ability to meet the child's current and lifelong needs. The potential adoptive resource or his or her legal or personal advocate may not attend an adoption committee.

(5) Any individual invited to provide information related to the child's needs may present that information to the adoption committee in person, by telephone, through electronic communication, or in writing.

(6) Each adoption worker presenting a potential adoptive resource and the child's caseworker must attend the full adoption committee. When an adoption worker or a caseworker is unavailable, the worker's supervisor or a designated co-worker must present the potential adoptive resource or the child to prevent delay of the adoption committee. When an out-of-state relative is being presented, the local child welfare office determines who presents information regarding the relative.

(7) After presentation of information about the child and his or her siblings to the adoption committee:

(a) All of the following individuals remain at the adoption committee:

(A) The adoption committee members;

(B) The ADS;

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(C) Each CASA, attorney, tribal representative, or member of the RCWAC, whether or not these individuals are participating as committee members; and

(D) Each adoption worker or other individual attending to present information regarding the potential adoptive resource.

(b) All other individuals are excused from the adoption committee.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0040

Department Responsibility Regarding Potential Adoptive Resources

(1) The child's caseworker must do all of the following:

(a) Receive and review adoption home studies;

(b) Identify potential adoptive resources with the capacity to meet the current and lifelong needs of a child or identified sibling group as described in Child Welfare Policy I-G.1.2, "Identification and Consideration of Potential Adoption Resources" OAR 413-120-0700 to 413-120-0760; and

(c) Notify the adoption worker whether a potential adoptive resource:

(A) Has been identified for consideration by an adoption committee;

or

(B) Has been selected by the caseworker as an adoptive resource under OAR 413-120-0020(1).

(2) The adoption worker must do all of the following:

(a) Inform the potential adoptive resource whether the potential adoptive resource has been identified for consideration by an adoption committee or selection by a caseworker;

(b) Provide the potential adoptive resource with information regarding the adoption placement selection process; and

(c) Obtain all appropriate releases of information.

[E.D. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2007(Temp), f. & cert. ef. 2-26-07 thru 8-24-07; CWP 13-2007, f. & cert. ef. 8-1-07; Administrative correction 9-16-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0050

Response to Invitation, Notification to the Department, and Distribution and Review of Written Materials

(1) Any individual other than a Department staff member invited to participate as an adoption committee member under OAR 413-120-0035, must notify the Department at least 10 business days prior to the adoption committee whether the individual will participate as an adoption committee member.

(2) At least 7 business days prior to the scheduled adoption committee, the Department will send each participating adoption committee member and the ADS written information, for review at the scheduled adoption committee, regarding all of the following:

(a) The child, and his or her siblings, if any; and

(b) The potential adoptive resources.

(3) Any exception to the timelines in sections (1) and (2) of the rule must be agreed upon by the adoption committee.

(4) Each adoption committee member who receives the confidential written information prior to the scheduled adoption committee is responsible for thorough review of all the information.

(5) All confidential written information provided to an adoption committee member under section (2) of this rule will be retained by the Department at the conclusion of the scheduled adoption committee.

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0053

The Adoption Committee

(1) Individuals invited under OAR 413-120-0035(2) to participate in an adoption committee are expected to comply the requirements of all of the following subsections:

(a) Present written or oral information regarding a child during the adoption committee;

(b) Respond to clarifying questions from adoption committee members; and

(c) Be excused from the adoption committee prior to the presentation of the potential adoptive resources.

(2) Individuals who have been invited to participate as adoption committee members but fail to provide the notification required in OAR 413-120-0050(1) may attend the full adoption committee but may not participate in deliberations or recommendations regarding the adoption placement selection to the ADS.

(3) Adoption committee members must comply with the requirements of all of the following subsections:

(a) The adoption committee members must consider the information in the presentations regarding the current and lifelong needs of each child and each potential adoptive resource.

(b) The adoption committee members must deliberate based on all of the information provided to them and make a recommendation to the ADS regarding the adoptive resource that is likely to permanently and fully integrate the child into the family and meet the current and lifelong needs of the child and each of his or her siblings.

(A) When adoption committee members agree, the adoption committee may make one or more of the following recommendations:

(i) State which single adoptive resource is the most appropriate;

(ii) State one or more potential adoptive resources are equally appropriate;

(iii) State an order of preference of appropriate adoptive resources; or

(iv) State one or more potential adoptive resource is not appropriate and should not be considered.

(B) When the adoption committee cannot reach agreement, each adoption committee member makes his or her respective recommendations to the committee facilitator.

(c) At the conclusion of the adoption committee, the committee facilitator must do all of the following:

(A) Present the adoption committee recommendations to the ADS; and

(B) Document in writing each of the following:

(i) The results of the adoption committee's deliberations;

(ii) The rationale supporting the adoption committee's recommendation; and

(iii) Submit the written documentation to the ADS within 3 business days following the adoption committee.

(4) The ADS is not a member of the adoption committee and participation by the ADS during the adoption committee is limited to asking questions to clarify or seek further information. Questions from the ADS are reserved for the end of each presentation and prior to the deliberations.

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0057

The Adoption Selection and Notification

(1) The ADS must do all of the following:

(a) Make the adoption placement selection in compliance with both of the following:

(A) Based upon the information gathered through the adoption committee process; and

(B) When the ADS relies on additional information not available to the adoption committee at the time the adoption committee deliberates, document the additional information in the written decision.

(b) Make the decision by the end of the next business day following the adoption committee.

(2) Notification of the Adoption Placement Selection.

(a) The ADS must notify the child's caseworker, the adoption workers, and the committee facilitator of the adoption placement selection by the end of the next business day following the scheduled adoption committee.

(b) By the end of the next business day after the notification in subsection (a) of this section:

(A) The adoption workers must notify each family presented at the adoption committee that an adoption placement selection has been made. When the adoption worker is not available, a local child welfare office supervisor or private agency supervisor is responsible for ensuring notifications are made in accordance with this subsection.

(B) The child's caseworker must notify the child's attorney, CASA, tribal representative and a member of the RCWAC. When the child's caseworker is not available, a local child welfare office supervisor is responsible for ensuring notifications are made in accordance with this subsection.

(3) The ADS must send written documentation of the adoption placement selection to the central office Adoption Program within four business days following the adoption committee.

Stat. Auth.: ORS 418.005, 418.280, 418.285

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

ADMINISTRATIVE RULES

413-120-0060

Review of the Adoption Selection

(1) When requested by someone other than the DHS Assistant Director of CAF, the scope of the review is limited to the selection process and the decisions made by the caseworker or ADS.

(2) The following individuals may submit a written request for the review under section (1) of this rule.

- (a) The child;
- (b) The child's attorney;
- (c) The child's caseworker, with the approval of the caseworker's supervisor and the Child Welfare Program Manager or designee;
- (d) The CASA;
- (e) A tribal representative;
- (f) A member of the RCWAC;
- (g) A relative who was considered as the adoptive resource but was not selected;
- (h) The sibling's current guardian, relative, current caretaker, or adoptive resource with whom the sibling is currently living; or
- (i) A current caretaker who was considered as an adoptive resource but was not selected.

(3) A written request for review must be received by the Adoption Program Manager or designee within seven calendar days of the notification of the adoption placement selection under OAR 413-120-0020(5) or OAR 413-120-0053(3).

(4) The DHS Assistant Director for CAF or designee must decide whether to grant a review of the adoption placement selection within 14 calendar days after the notice of the adoption placement selection under OAR 413-120-0020(5) or 413-120-0057(3).

(5) The DHS Assistant Director for CAF or designee must provide written notice of the decision whether to review the adoption placement selection to the requestor, with copies to the child's caseworker, caseworker's supervisor, the adoption worker, the local Child Welfare Program Manager, and the Adoption Program Manager. This written notice required under this section may be provided outside of the 14 day period described in section (4) of this rule.

(6) The DHS Assistant Director for CAF or designee may also, on his or her initiative and without a request for a review, give notice of intent to review the adoption placement selection when the requirements of both of the following subsections are met:

(a) The decision to review is made within seven calendar days after the date of the notice of the adoption placement selection in OAR 413-120-0057(2).

(b) Upon making a decision to review, the DHS Assistant Director for CAF or designee gives notice of intent to review to the child's caseworker, caseworker's supervisor, the adoption worker, the local Child Welfare Program Manager, and the Adoption Program Manager.

(7) When the DHS Assistant Director for CAF or designee gives notice of intent to review, he or she may take the actions in at least one of the following subsections:

(a) Personally conduct a review of information considered when making the adoption placement selection, and may consider additional, relevant information. The DHS Assistant Director for CAF must issue a decision affirming or changing the original adoption placement selection.

(b) Remand an adoption placement selection to an adoption committee to make an adoption placement recommendation.

(A) The adoption committee reviews information considered when making the adoption placement selection.

(B) The adoption committee may issue a recommendation supporting or not supporting the adoption placement selection of the caseworker or the ADS; and

(C) Make adoption placement recommendations to the DHS Assistant Director for CAF or designee.

(D) The DHS Assistant Director for CAF or designee makes the final adoption placement selection.

(c) Appoint another individual to conduct a review of information considered when making the adoption placement selection, to include consideration of additional relevant information.

(A) The individual makes a recommendation affirming the original adoption selection decision or a new adoption selection decision.

(B) The DHS Assistant Director for CAF or designee will make the final adoption placement selection.

(8) The decision made by the DHS Assistant Director for CAF or designee as a result of a review under this rule is final.

(9) Notwithstanding sections (1) through (8) of this rule, the DHS Assistant Director for CAF may reconsider a decision and require the

actions in subsections (7)(a) to (c) of this rule to occur when the following conditions exist:

(a) The time to request review of an adoption placement selection under section (3) of this rule has expired;

(b) There is no request for review pending; and

(c) The deadline set by statute for a person entitled to seek judicial review of an adoption placement selection entered under sections (1) to (8) of this rule has not expired.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SCF 9-1997(Temp), f. & cert. ef. 8-15-97; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 23-2007(Temp), f. & cert. ef. 12-12-07 thru 6-9-08; CWP 4-2008, f. 5-30-08, cert. ef. 6-1-08; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0080

Legal Consent

The Assistant Director of CAF or the Assistant Director's designee is the person responsible for providing legal consent for the adoption of a child in Department permanent custody.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.280 - 418.285

Hist.: SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; Suspended by CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0500

Purpose

These rules, OAR 413-120-0500 to 413-120-0595, establish the process by which a foster parent may be recommended as a current caretaker for the purpose of consideration as a potential adoptive resource as a part of case planning for a child or identified sibling group who has a permanency plan of adoption.

Stat. Auth.: ORS 418.005, 418.285

Stats. Implemented: ORS 418.005, 418.285

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0510

Definitions

The following definitions apply to OAR 413-120-0500 to 413-120-0595:

(1) "Adoptive Resource" means an individual or individuals selected as the adoptive family for a child and the selection has not been subject to an administrative review, or if subject to a review, has been sustained by that review.

(2) "CASA" means a court appointed special advocate, a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419A.170.

(3) "Child" means a person under 18 years of age.

(4) "Committee facilitator" means a Department staff member appointed to facilitate a permanency or adoption committee meeting. The facilitator is a member of the committee and is responsible for ensuring:

(a) The meeting is held according to the requirements of Oregon Administrative Rules;

(b) Individuals who are not committee members and are invited to and attend the meeting are:

(A) Informed of the responsibilities of the committee and the confidentiality of information presented during the meeting;

(B) Allowed to present information appropriate for consideration in the permanency or adoption recommendation for the child and his or her siblings; and

(C) Excused in a timely manner.

(c) Thorough and accurate documentation of the committee recommendations.

(5) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of adoption;

(b) Has cared for the child for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, his or her siblings who are also in substitute care but have not lived with the foster parent for 12 consecutive months.

ADMINISTRATIVE RULES

(6) "Department" means the Department of Human Services, Child Welfare.

(7) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated children or young adults who are placed in the home by the Department.

(8) "General applicant" means an individual:

(a) Who is not a relative, current caretaker, or a sibling's current guardian, relative, current caretaker, or adoptive resource with whom the sibling is current living; and

(b) Has submitted a completed application to adopt a child.

(9) "Indian child" means any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(10) "Permanency committee" means a group of at least three individuals, who are responsible for making a recommendation regarding a child's permanency plan when the child likely is not returning to his or her parent.

(a) A permanency committee must include three individuals, approved by the child welfare program manager or designee, none of whom has a current personal or professional relationship to the child or potential placement resource. These approved committee members:

(A) Must include at least one individual who is a Department staff member;

(B) Must include a Department staff member appointed as the Committee Facilitator; and

(C) May include one or two individuals who are community partners.

(b) Each of the three permanency committee members approved under subsection (a) of this section must meet the requirements of all of the following paragraphs:

(A) Be knowledgeable about adoption and permanency issues;

(B) Be knowledgeable of the importance of lifelong family attachment and cultural connections; and

(C) Must represent more than one local child welfare office when there are two or more Department staff members on the permanency committee.

(11) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(12) "Refugee child" means, as defined by ORS 418.925, 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, sex, sexual orientation, 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, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person in order to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(13) "Relative" has the meaning given that term in OAR 413-070-0063.

(14) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the children's or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the child's legal or biological parent.

(15) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

Stat. Auth.: ORS 418.005, 418.945

Stats. Implemented: ORS 418.005, 418.945

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0520

Values

(1) Every child has a right to a permanent family.

(2) Decision making for a child should be guided by the child's best interests and an understanding of the child's current and future needs.

(3) The psychological and emotional attachments of a child to the current caretaker are of vital consideration in determining the best interests of the child.

(4) The best adoption placement selection decisions are always made as the result of a collaborative process.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.285 & 418.290

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04; Suspended by CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0521

Substitute Care is a Temporary Resource

(1) At initial placement, the caseworker must inform the foster parent that substitute care is intended as a temporary placement resource.

(2) In limited circumstances, as described in these rules, a foster parent may become an adoptive resource for a child.

(3) The child's caseworker must keep the foster parent informed of both the child's primary permanency and concurrent permanency plan.

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0530

Determine that Diligent Search Completed

Once the Department makes a formal decision, approved by a legal assistance specialist in the Adoption Services Unit, to proceed to free a child for adoption, or if a petition to terminate parental rights is filed by the child's attorney, and if a current caretaker expresses interest in being a permanent placement resource for the child in his or her care, the Department determines whether a diligent search for the relatives of the child (see OAR 413-070-0060 to 413-070-0075) has been completed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SCF 9-1997(Temp), f. & cert. ef. 8-15-97; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04; Suspended by CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0540

Scheduling, Arranging, and Staffing the Current Caretaker Committee

(1) Once a diligent search for relatives has been completed, the child's caseworker schedules a current caretaker committee. The purpose of the committee is to consider the current caretaker's interest in being the adoptive resource for the child.

(2) The committee must be scheduled within 30 days of the child's worker's request, unless the SDA Manager or designee determines that there is good cause to extend the deadline.

(3) Except as provided in subsection (a), (b), and (c) of this section, the committee must consist of at least three persons, the SDA manager or designee, a supervisor, and one other staff person from the local office who is knowledgeable about permanency and adoptive planning. Other compositions of the committee are required in the following situations:

(a) If the office responsible for the child is not the office serving the county in which the current caretaker resides, the committee must consist of one person approved by the child's local office, one person approved by the current caretaker's local office, and a third person agreed upon by the SDA managers or designees from the two offices.

(b) If the current caretaker is a Department employee or an employee of a partner agency, the current caretaker committee must be scheduled as a Central Office adoption committee.

(c) The child's caseworker, with the approval of his or her SDA Manager or designee, may schedule the current caretaker committee with a permanency/adoption council committee serving the child's local office.

(4) The child's caseworker must notify the child's attorney and the Court Appointed Special Advocate (CASA) of the time and location of the current caretaker committee and invite them to the child-presentation portion of the committee. The child's caseworker must notify the child's tribe, if ICWA applies to the child, of the time and location of the current caretaker committee and invite them to the committee. The child's attorney, CASA, and tribe may present information to the committee in person, in writing, or by phone. The child's attorney, the CASA, and the tribe may provide the caseworker with the names of other individuals who may have

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significant information regarding the child's needs. These persons may provide information in writing to the committee.

(5) At the committee, the child's worker presents information regarding the child and the current caretaker, and the foster home certifier presents information about the current caretaker. The committee considers information presented to it in person, by telephone, and in writing.

(6) If a current caretaker who has not previously requested consideration as a resource asks to be considered after the Department has requested but has not received approval of an adoptive home study on a relative resource, if recruitment has begun for general applicants, or if the date of the adoption committee has been set, the Department may consider the current caretaker if it is in the best interests of the child to do so. In making this decision, the Department will consider:

(a) The child's individual needs, including the child's attachment to the current caretaker;

(b) The potential of the current caretaker to meet the child's current and lifelong needs; and

(c) The effect on the child of the delay in permanency that may occur as a result of the new consideration process.

(7) The committee may make only one of the following recommendations:

(a) That an adoptive study of the current caretaker be completed or updated within 90 days of the date of the current caretaker staffing. An exception to this deadline must be approved in writing by the SDA manager or designee. The completed adoption home study must address all concerns identified in the staffing. If the current caretaker has a current comprehensive foster or kinship home study on file, the adoption study may be abbreviated, addressing issues of concern raised in the designated committee and current and future child-specific issues of permanency and well being.

(A) The Department will consider a current caretaker as the adoptive resource for the child, and a current caretaker restaffing is not necessary. Final approval of this recommendation is delegated to the family's adoption worker, the child's worker, and a designated member of the field office's management staff. Any of these three persons may request a restaffing by the designated branch committee.

(B) The Department will consider the current caretaker's completed adoptive home study at the current caretaker committee restaffing.

(C) A central adoption committee will consider the current caretaker as well as studied non-related adoptive families except when the current caretaker is a relative. Only other relative families may be considered with the current caretaker relative.

(D) The Department will consider a non-relative or related current caretaker with studied relative families. If the non-current caretaker relative elects not to be considered, or the Department is unable to consider the non-current caretaker relative, the current caretaker will be considered alone. A current caretaker restaffing is not necessary. Final approval of this recommendation is delegated to the family's adoption worker, the child's worker, and a designated member of the field office's management staff. Any of these three persons may request a restaffing by the designated field office committee.

(E) The Department will consider a non-relative or relative current caretaker with studied relative families. If the non-current caretaker relative elects not to be considered, or the Department is unable to consider the non-current caretaker relative, the Department will consider the current caretaker's completed adoptive home study at the current caretaker committee restaffing.

(F) The Department will consider a non-relative current caretaker with studied relative families. If the relative elects not to be considered, or the Department is unable to consider the relative, the current caretaker will be presented at a central adoption committee with the other recruited non-related adoptive families.

(b) That the committee does not find that the current caretaker is likely to be able to meet the individual needs of the child over time and cannot recommend the current caretaker as the adoptive resource for this child. In this case, no study will be undertaken by the Department. The reasons for this decision must be documented using the form CF 251. The completed form is available to any Department adoption committee that considers the current caretaker. The child's caseworker must immediately notify the current caretaker of the decision, and the Department provides to the current caretaker, in a letter, the decision and the reasons supporting it within three calendar days of the committee meeting.

(8) A current caretaker not approved as an adoptive resource by the committee may be presented to a central adoption committee upon request of the current caretaker in accordance with the following procedures:

(a) In order to be presented, the current caretaker must provide a letter of request to the child's worker within 10 days of the written notification of the local office's decision.

(b) The local office has the discretion to determine by whom and in what form information about the family will be presented to a central adoption committee. For example, the family's certifier may attend and may use the certification home study.

(c) At the discretion of the local office, the current caretaker may obtain, at no cost to the Department, an adoption home study by a state-licensed private adoption agency holding a contract with the Department for the completion of special needs adoption home studies and may be represented before the committee by the agency. In this case, the caretaker must inform the child's worker by letter within 10 days of the written notification of the committee's decision. To be considered by the committee, the approved adoption home study must be completed and made available to the committee within time lines established by the local office.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.285 & 418.290

Hist.: SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04; Suspended by CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0541

When a Foster Parent Can Request Consideration as a Potential Adoptive Resource

A foster parent may request consideration as a current caretaker for a child in the legal custody of the Department when the requirements of all of the following sections are met:

(1) Adoption is the child's identified permanency or concurrent permanency plan and the Department determines it is in the best interest of the child to proceed with identifying potential adoptive resources;

(2) The child has been in the physical custody of the foster parent for the most recent 12 consecutive months;

(3) The foster parent is willing to be considered as the adoptive resource for the child's siblings currently in substitute care who also have adoption as an identified permanency or concurrent permanency plan; and

(4) The caseworker and the caseworker's supervisor have complied with the requirements of both of the following subsections:

(a) Reviewed the Department's diligent efforts to identify, contact, and place a child with relatives and to place siblings together as required under both Child Welfare Policy I-E.1.1, "Search for and Engagement of a Child's Relatives" OAR 413-070-0060 to 413-070-0087 and Child Welfare Policy I-G.1.2, "Identification and Consideration of Potential Adoption Resources" OAR 413-120-0700 to 413-120-0760; and

(b) Have confirmed there are no pending Department actions to

(A) Identify a child's relatives or a sibling's current guardian, relative, current caretaker, or adoptive resource with whom the sibling is currently living; and

(B) Assess a relative who has either expressed an interest in and needs to be or currently is being assessed as a permanency resource.

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0551

Caseworker Assessment of Foster Parents as Current Caretaker

When considering a foster parent's request for consideration as an adoptive resource under OAR 413-120-0541, within 60 calendar days, and in consultation with the child's team, the supervisor, and the foster parent's certifier, the caseworker must assess all of the following:

(1) The existence of significant emotional ties between the child and the foster parent;

(2) Whether any conditions or circumstances exist that may impact the foster parent's ability to meet the standards of an adoptive home described in OAR 413-120-0200; and

(3) The foster parent's ability to meet the placement needs of the child and his or her siblings under each of the categories described in OAR 413-070-0630 by reviewing the foster parent's knowledge, skills, and abilities in meeting the child's current and lifelong needs for all of the following:

(a) Physical and emotional safety;

(b) Ability to develop and maintain connections to the child's family;

(c) Continuity and familiarity;

(d) Appropriate educational, developmental, emotional, and physical support;

(e) Integrate the child into the family;

(f) Stability and permanency; and

(g) Maintaining his or her identity and cultural and religious heritage.

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Stat. Auth.: ORS 418.005, 418.937, 418.945, 419B.192
Stats. Implemented: ORS 418.005, 418.937, 418.945, 419B.192
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0560

Caseworker Decision of Foster Parents as Current Caretaker

(1) When the assessment activities under OAR 413-120-0551 have been completed, the caseworker makes a decision under one of the following subsections:

(a) The foster parent may be further reviewed for consideration as a potential adoptive resource and schedules a permanency committee; or

(b) The foster parent may not have further consideration as a potential adoptive resource.

(2) The caseworker must notify the foster parent of the decision made under section (1) of this rule within one business day following the decision and document the decision in the Department's information system.

(3) Following a decision made under subsection (1)(b) of this rule, the foster parent may request a review of the caseworker's decision by meeting the requirements of all of the following subsections:

(a) Submit a written request for a review of the decision made under subsection (1)(b) within seven calendar days of the notice of the decision.

(b) The foster parent must submit the written request to the District Manager.

(c) The written request must include the reasons why the foster parent is requesting a review.

(4) Within 14 calendar days of receiving a written request submitted under section (3) of this rule, the District Manager must do all of the following:

(a) Review the written request of the foster parent, and any information requested and received from the caseworker;

(b) Determine whether the foster parent will be considered a potential adoptive resource as a current caretaker; and

(c) Notify the foster parent and the caseworker of the decision within one business day following the decision.

Stat. Auth.: ORS 418.005, 419B.192
Stats. Implemented: ORS 418.005, 419B.192
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0570

Permanency Committee Consideration of Current Caretaker

(1) When a permanency committee has been scheduled to consider whether a foster parent is a potential adoptive resource, the Department must notify and invite all of the following individuals to provide information to the permanency committee.

(a) The caseworker for the child and for each sibling;

(b) The supervisor of the caseworker for the child and for each sibling;

(c) The foster parent's certifier;

(d) The attorney for the child and for each sibling;

(e) The CASA for the child and for each sibling;

(f) A tribal representative when a child is an Indian child; and

(g) A member of the RCWAC when a child is a refugee child.

(2) The individuals invited to attend the permanency committee under section (1) of this rule may provide the Department with the names of other individuals who have significant information related to the child's needs and request that the Department invite the individuals to present information to the permanency committee.

(3) Any individual invited to provide information related to the child's needs may present that information to the permanency committee in person, by telephone, through electronic communication, or in writing.

(4) The permanency committee members may seek additional or clarifying information during the presentations.

(5) When the presentations are completed, the child's attorney, CASA, tribal representative, member of the RCWAC, and any other individuals invited to provide information are excused from the permanency committee. The each caseworker for the child and each of his or her siblings, each supervisor of a caseworker, and the foster parent's certifier remain for the completion of the permanency committee but do not participate in making the committee recommendation.

(6) The permanency committee must review all of the information presented to the committee and consider the extent to which the foster parent meets the factors assessed under OAR 413-120-0551.

(7) The permanency committee, after review and consideration of all the information presented during the committee meeting, may request further information as needed prior to making a recommendation. When the committee requests additional information prior to making a recommendation, the committee must document all of the following:

(a) What additional information is needed;

(b) A timeline for gathering the additional information; and

(c) The date and time when the permanency committee will reconvene to consider the additional information.

(8) When the permanency committee has considered all the information, the permanency committee makes one of the following recommendations:

(a) The foster parent demonstrates the characteristics needed to meet the current and lifelong safety, permanency, and well being needs of the child and his or her siblings; is considered a current caretaker; and whether the current caretaker will be considered alone or with general applicants in the adoption selection; or

(b) The foster parent is not recommended as a current caretaker because it has been determined the foster parent does not demonstrate the characteristics needed to meet the current and lifelong safety, permanency, and well being needs of the child and his or her siblings.

(9) The committee facilitator must provide written documentation of the recommendation of the permanency committee to the child welfare program manager or designee within three business days of the permanency committee recommendation.

(a) When the permanency committee recommends the foster parent is able to meet the permanency needs of the child and his or her siblings, if any, and may be considered a current caretaker, the committee must document the reasons for the recommendation.

(b) When the permanency committee does not recommend the foster parent as a current caretaker because it determined the foster parent does not demonstrate the characteristics needed to meet the current and lifelong safety, permanency, and well being needs of the child and his or her siblings, the permanency committee must document each reason an affirmative recommendation was not made.

(10) The child welfare program manager or designee responsible for making the decision on behalf of the Department may attend the permanency committee meeting, listen and ask for clarifying or additional information, but may not have been a participating member of the committee.

(11) The child welfare program manager or designee must consider the recommendations of the permanency committee and make a decision within three business days of receiving the permanency committee recommendation.

(a) When the child welfare program manager or designee determines the foster parent is considered a current caretaker, the child welfare program manager or designee must do all of the following:

(A) Provide notice of the decision to the caseworker for the child and any siblings involved in the decision and supervisor of the caseworkers;

(B) Direct whether the current caretaker will be considered alone or with general applicants in the adoption selection process; and

(C) Direct the certifier or an adoption worker to complete a home study update within 90 calendar days of the permanency committee recommendation.

(b) When the child welfare program manager or designee determines the foster parent is not considered a current caretaker, the child welfare program manager or designee provides notice of the decision to the caseworker and supervisor.

(12) Upon receipt of the child welfare program manager or designee's decision, within one business day, the child's caseworker notifies each of the following:

(a) The child's foster parent.

(b) The CASA for the child and for each sibling, if any.

(c) The attorney for the child and for each sibling, if any.

(d) The tribal representative, when the child is an Indian child.

(e) The member of the RCWAC when the child is a refugee child.

Stat. Auth.: ORS 418.005, 418.937, 418.945, 419B.192
Stats. Implemented: ORS 418.005, 418.937, 418.945, 419B.192
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0580

Review of the Child Welfare Program Manager's Decision

(1) Any of the following individuals may request a review of the child welfare program manager or designee's decision not to consider the foster parent as a current caretaker for the child and his or her siblings. A request for a review must be submitted in writing to the District Manager within seven calendar days of the notification required under OAR 413-120-0570(11):

(a) The caseworker for the child and for each sibling, if any;

(b) The supervisor of the caseworker for the child and for each sibling, if any;

(c) The attorney for the child and for each sibling, if any;

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- (d) The CASA for the child and for each sibling, if any;
- (e) When the child is an Indian child, the tribal representative;
- (f) When the child is a refugee child, the member of the RCWAC; and
- (g) The child's foster parent.

(2) Within 14 calendar days of the notification required under OAR 413-120-0570(11), the District Manager must review the written request, and all written materials submitted to the child welfare program manager or designee. The District Manager may request additional relevant information for consideration during the review.

(3) Upon completing the review, the District Manager must provide written notice to the individuals identified in section (1) of this rule and the notice must state one of the following:

(a) The child welfare program manager or designee's decision not to recommend the foster parent for consideration as a current caretaker is affirmed, and there will be no further consideration of the foster parent as a current caretaker; or

(b) The child welfare program manager or designee's decision not to recommend the foster parent for consideration as a current caretaker is reversed, and the caseworker is directed to consider the foster parent as a current caretaker. The District Manager also determines whether or not the adoption selection process will include general applicants.

(4) The District Manager must document the decision and how the decision is based on the best interests of the child.

(5) The decision of the District Manager is final.

Stat. Auth.: ORS 418.005, 418.937, 418.945, 419B.192

Stats. Implemented: ORS 418.005, 418.937, 418.945, 419B.192

Hist.: CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04; Renumbered from 413-120-0550, CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0590

Relative Identification Post Current Caretaker Consideration

When a child's relative is identified and expresses interest in but has not yet been assessed prior to a decision that a foster parent will be considered a current caretaker, the child welfare program manager decides whether to proceed with a foster parent's request for consideration.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0595

Foster Parent Determined as Current Caretaker before July 1, 2010

(1) A foster parent may be considered a current caretaker under these rules, OAR 413-120-0500 to 413-120-0595, and may be considered as a potential adoptive resource when all of the following requirements have been met:

(a) The foster parent has had physical custody of a child in the legal custody of the Department during the six consecutive months prior to July 1, 2010;

(b) The foster parent has expressed interest in becoming a potential adoptive resource;

(c) The Department has determined the diligent search for relatives had been completed; and

(d) Prior to July 1, 2010, a preliminary current caretaker or permanency committee has been scheduled to review the foster parent as a potential adoptive resource.

(2) When a foster parent had been recommended for consideration as a potential adoptive resource through a preliminary current caretaker committee held prior to July 1, 2010, the decisions made by the Department remain in effect.

(3) When a permanency committee recommends the current caretaker for consideration as a potential adoptive placement resource for a child, the current caretaker may be considered as described in Child Welfare Policy I-G.1.5, "Adoption Placement Selection" OAR 413-120-0000 to 413-120-0060.

Stat. Auth.: ORS 418.005, 419B.192

Stats. Implemented: ORS 418.005, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0700

Purpose

These rules, OAR 413-120-0700 to 413-120-0760, describe the responsibilities of the Department to:

(1) Identify potential adoptive resources to be considered for a child or identified sibling group for whom adoption is the permanency plan; and

(2) Establish the priority in which the potential adoptive resources will be assessed and considered.

Stat. Auth.: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192

Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0710

Definitions

The following definitions apply to these rules, OAR 413-120-0700 to 413-120-0760:

(1) "Adoption Committee" means either a Central Office Adoption Committee or a Local Adoption Committee.

(2) "Adoption home study" means a document which includes an assessment of a potential adoptive resource to determine the suitability of the potential adoptive resource to make a lifelong permanent commitment to adopt a child in the Department's custody, in the custody of a public welfare agency in another state, or under the jurisdiction of a juvenile court in another state.

(3) "Adoption worker" means an individual assigned by the Department or another public or private agency to complete an adoption home study and represent the family in the adoption selection process.

(4) "Adoptive resource" means an individual or individuals selected as the adoptive family for a child and the selection has not been subject to an administrative review, or if subject to a review, has been sustained by that review.

(5) "CASA" means a court appointed special advocate, a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419A.170.

(6) "Child" means a person under 18 years of age.

(7) "Current Caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanency plan of adoption;

(b) Has cared for the child for at least the past 12 consecutive months; and

(c) Has been approved for consideration by the Department as a potential adoptive resource for the child and when appropriate, his or her siblings who are also in substitute care but have not lived with the foster parent for 12 consecutive months.

(8) "Department" means the Department of Human Services, Child Welfare.

(9) "Designee" means an individual whom the designator directly and immediately supervises, or an individual with equal or greater management responsibility than the designator.

(10) "Emotionally significant relationship" means a child's connection to a parent or other caregiver that endures over time, establishes an interpersonal connection, and aids in the development of a sense of self.

(11) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for unrelated children or young adults who are placed in the home by the Department.

(12) "General applicant" means an individual who ---
(a) Is not a relative, current caretaker or a sibling's current guardian, relative, current caretaker, or adoptive resource with whom the sibling is current living; and

(b) Has submitted a complete application to adopt a child.

(13) "Indian child" means any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(14) "Legal assistance specialist" means a Central Office Adoption Program staff member who provides consultation on the technical and legal processes to achieve a permanency plan for a child in the legal custody of the Department.

(15) "Permanency committee" means a group of at least three individuals, who are responsible for making a recommendation regarding a child's permanency plan when the child likely is not returning to his or her parent.

(a) A permanency committee must include three individuals, approved by the child welfare program manager or designee, who have no current personal or professional relationship to the child or potential placement resource. The three individuals:

(A) Must include individuals who are Department Staff, one of whom has been appointed as a Committee Facilitator; and

(B) May include one or two individuals who are community partners.

(b) The three permanency committee members approved under subsection (a) of this section must:

(A) Be knowledgeable of adoption and permanency issues;

(B) Be knowledgeable of the importance of lifelong family attachment and cultural connections; and

(C) Must represent more than one local child welfare office when there are two or more Department staff members.

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(16) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(17) "Recruitment" means the actions and activities of the Department to identify an appropriate adoptive resource for a child.

(18) "Relative" has the meaning given that term in OAR 413-070-0063.

(19) "Sibling" means one of two or more children or young adults related:

- (a) By blood or adoption through a common legal parent;
- (b) Through the marriage of the children's or young adults' legal or biological parents; or

(c) Through a legal or biological parent who is the registered domestic partner of the child's legal or biological parent.

Stat. Auth.: ORS 109.309, 418.005, 418.285, 418.937, 419B.090, 419B.100, 419B.192
Stats. Implemented: ORS 109.309, 418.005, 418.285, 418.937, 419B.090, 419B.100, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0720

Preference for Adoptive Resources

(1) The Department's first priority for placement for the purposes of adoption is placement with relatives and siblings.

(2) The Department makes diligent efforts to give preference to place with relatives and to place siblings together. This priority takes precedence over the placement with a current caretaker or any other potential adoptive resource.

(3) To be considered as the adoptive placement for a child the potential adoptive resource must be willing to adopt an identified sibling group, unless separation of siblings has been approved by the Department as described in Child Welfare Policy I-F.6, "Sibling Permanency Placement Planning" OAR 413-110-0100 to 413-110-0150.

(4) When pursuing each potential adoptive resource, the Department must comply with both Child Welfare Policy I-E.1.1, "Search for and Engagement of a Child's Relatives" OAR 413-070-0060 to 413-070-0087 and Child Welfare Policy I-F.6, "Sibling Permanency Placement Planning" OAR 413-110-0100 to 413-110-0150.

(5) To keep siblings together, a sibling's guardian, relative, current caretaker, or adoptive resource with whom the sibling is currently living may be considered as potential adoptive placements along with relatives of the child, even if the potential adoptive placement is not a relative of the child.

(6) When more than one relative or sibling resource as described in section (5) of this rule is interested in being an adoptive resource, the Department must seek the input of those interested to facilitate agreement on potential adoptive resources.

(a) If agreement cannot be reached, the Department selects up to three families, including maternal and paternal family members and sibling resources, when available, for adoption home studies to be conducted by either the Department or another public or private agency.

(b) When a relative or sibling resource selected for an adoption home study is not approved or withdraws as a potential adoptive resource, the child welfare program manager or designee decides whether the Department will initiate adoptive home studies with additional relatives or sibling resources and must consider both of the following:

- (A) The best interests of the child; and
- (B) The impact on achieving permanency when pursuing additional studies.

(7) Prior to pursuing a non-relative or non-sibling resource as described in section (5) of this rule for the purpose of adoption, the caseworker and caseworker's supervisor must review the Department's diligent efforts to identify, contact, and place a child with relatives and to place siblings together as described in section (4) of this rule and have determined there are no pending Department actions to identify or assess a child's relatives or sibling resources.

Stat. Auth.: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192
Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0730

Foster Parents as an Adoptive Resource

(1) When a child cannot be placed with a relative or sibling, the Department may consider a foster parent as an adoptive resource as described in Child Welfare Policy I-G.1.1, "Foster Parent Request for Consideration as a Current Caretaker" OAR 413-120-0500 to 413-120-0595.

(2) On a case by case basis, when a foster parent does not meet the time requirement necessary for consideration as a current caretaker, the fos-

ter parent may be eligible for sole consideration as an individual with an emotionally significant relationship as described in OAR 413-120-0740.

Stat. Auth.: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192
Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0740

Determination of an Emotionally Significant Relationship

(1) When the child or child's family determines an individual has an emotionally significant relationship as described in Child Welfare Policy I-E.1.1, "Search for and Engagement of Relatives" OAR 413-070-0060 to 413-070-0087, the individual is considered a relative. For all other individuals, the Department determines whether an emotionally significant relationship exists as described in this rule, however the determination does not result in a relative relationship.

(2) In making this determination, the Department must consider the unique current and lifelong needs of the child that would best be met by an adoptive resource who has a relationship with the child. Furthermore, this benefit must outweigh the benefit that exists from general recruitment which allows for an expansion of the pool of potential adoptive resources considered for a child.

(3) When the individual being considered is a current foster parent who does not meet the time requirement necessary for consideration as a current caretaker, the time caring for a child and the subsequent relationship that develops is not by itself an emotionally significant relationship. When determining whether a foster parent will be considered as an adoptive resource the Department must consider and document the reasons described in section (2) of this rule.

(4) Upon the approval by the Assistant Adoption Program Manager or designee, the caseworker must schedule a permanency committee to consider the recommendation that the individual with an emotionally significant relationship will be considered alone and it is not in the best interests of the child to pursue general recruitment.

(5) Prior to scheduling the permanency committee, caseworker and the caseworker's supervisor must do both of the following:

(a) Review the Department's diligent efforts to identify, contact, and place a child with relatives and to place siblings together as required under Child Welfare Policies I-E.1.1, "Search for and Engagement of Relatives" OAR 413-070-0060 to 413-070-0087 and these rules, OAR 413-120-0700 to 413-120-0760.

(b) Confirm that the following Department actions are not pending:

(A) Identification of a child's relatives or a sibling's current guardian, relative, current caretaker or adoptive resource with whom the sibling is current living; and

(B) Assessment of a relative who has either expressed an interest in and needs to be or is currently being assessed as a permanency resource; or

(6) When a permanency committee has been scheduled to consider an individual as a person with an emotionally significant relationship, the Department must notify and invite the following individuals to provide information to the permanency committee.

(a) The caseworker for the child and for each sibling;

(b) The supervisor of the caseworker for the child and for each sibling;

(c) The individual's certifier, if applicable;

(d) The attorney for the child and for each sibling;

(e) The CASA for the child and for each sibling;

(f) When a child is an Indian child, a tribal representative; and

(g) When a child is a refugee child, a member of the RCWAC.

(7) The individuals invited under section (6) of this rule may provide the Department with the names of other individuals who have significant information related to the child's needs and request that the Department invite the other individuals to present information to the permanency committee.

(8) Any individual invited to provide information related to the child's needs may present that information to the permanency committee in person, by telephone, through electronic communication, or in writing.

(9) The permanency committee members may seek additional or clarifying information during the presentations.

(10) When presentations are completed, the child's attorneys, each CASA, the tribal representative, the member of the RCWAC, and any other individuals invited to provide information are excused from the permanency committee. The caseworkers for the child and each of his or her siblings, caseworkers' supervisors, and other Department staff members remain for the completion of the permanency committee but do not participate in making the committee recommendation.

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(11) The permanency committee must review all of the information presented to the committee and consider all of the following:

- (a) The requirements under section (2) of this rule;
- (b) Whether any conditions or circumstances exist that may impact the individual's ability to meet the standards of an adoptive home as described in OAR 413-120-0246; and
- (c) The individual's ability to meet the placement needs of the child and his or her siblings under each of the categories described in OAR 413-070-0630 by reviewing the information available regarding the individual's knowledge, skills, and abilities in meeting the child's current and lifelong needs for all of the following:
 - (A) Physical and emotional safety;
 - (B) Ability to develop and maintain connections to the child's family;
 - (C) Continuity and familiarity;
 - (D) Appropriate educational, developmental, emotional, and physical support;
 - (E) Integrate the child into the family;
 - (F) Stability and permanency; and
 - (G) Maintaining his or her identity and cultural and religious heritage.

(12) The permanency committee, after review and consideration of all information presented during the committee meeting, may request further information is needed prior to a recommendation. When the permanency committee requests additional information is needed prior to making a recommendation, the committee must document all of the following:

- (a) What additional information is needed;
- (b) A timeline for gathering the additional information; and
- (c) The date and time when the permanency committee will reconvene to consider the additional information.

(13) When the permanency committee has considered all the information, the permanency committee makes one of the following recommendations:

(a) The unique needs of the child and his or her siblings would best be met by an adoptive resource who has a relationship with the child, this benefit outweighs the benefit that exists from general recruitment, and the individual is recommended as a person with an emotionally significant relationship to be considered as the sole potential adoptive resource; or

(b) It is in the best interest of the child and his or her siblings for general recruitment to occur for the pool of potential adoptive resources to be expanded, and the individual will not be recommended to be considered as the sole potential adoptive resource.

(14) The committee facilitator must provide written documentation of the recommendation of the permanency committee to the child welfare program manager or designee within three business days of the permanency committee.

(15) The child welfare program manager or designee responsible for making the decision on behalf of the Department may attend the permanency committee meeting, listen and ask for clarifying or additional information, but may not have been a participating member of the committee.

(16) The child welfare program manager or designee must consider the recommendation of the permanency committee and make a decision within three business days of receiving the recommendation from the permanency committee.

(17) Upon receipt of the child welfare program manager or designee's decision, within one business day, the child's caseworker notifies:

- (a) The individual considered as having the emotionally significant relationship;
- (b) The CASA for the child and for each sibling, if any;
- (c) The attorney for the child and for each sibling, if any;
- (d) When the child is an Indian child, the tribal representative; and
- (e) When the child is a refugee child, the member of the RCWAC when the child is a refugee child.

Stat. Auth.: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192
Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0745

Review of the Child Welfare Program Manager's Decision

(1) Any of the following individuals may request a review of a child welfare program manager or designee's decision regarding an individual as a person with an emotionally significant relationship to be considered alone as the potential adoptive resource for a child and his or her siblings.

- (a) The caseworker for the child and for each sibling, if any;
- (b) The caseworker's supervisor for the child and for each sibling, if any;
- (c) The attorney for the child and for each sibling, if any;
- (d) The CASA for the child and for each sibling, if any;

- (e) When the child is an Indian child, the tribal representative; and
- (f) When the child is a refugee child, the member of the RCWAC.

(2) A request for a review must be submitted in writing to the District Manager within seven calendar days of the notification required in 413-120-0740(17)

(3) Within 14 calendar days of the notification required in 413-120-0740(17), the District Manager must review the written request, and all written materials submitted to the child welfare program manager. The District Manager may request additional relevant information for consideration during the review.

(4) Upon completing the review, the District Manager must provide written notice to the individuals identified in section (1) of this rule. The notice must state that either the child welfare program manager's decision is affirmed or reversed.

(5) The District Manager must document the decision and how the decision is based on the best interests of the child and the criteria described in OAR 413-120-0740(2).

(6) The decision of the District Manager is final.
Stat. Auth.: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192
Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0750

Recruitment Efforts

(1) The Department's recruitment efforts may not consider the race, color, or national origin of a potential adoptive resource. Except as described in section (2) of this rule, consideration of the cultural heritage of a potential adoptive resource may not be used as a substitute for race.

(2) When recruiting potential adoptive resources for an Indian child, the Department may consider the cultural heritage of a potential adoptive resource. Identification of a potential adoptive resource for an Indian child is described in Child Welfare Policy I-E.2.1, "Placement of Indian Children" OAR 413-070-0100 to 413-070-0260.

(3) Prior to recruitment for general applicants, the legal assistance specialist must:

(a) Determine when recruitment may begin if a child is not fully free for adoption;

(b) When a child has unique current and lifelong needs, determine whether recruitment can begin before the Department initiates the process to free the child for adoption; and

(c) Notify the caseworker to begin recruitment efforts.

(4) When recruitment for general applicants is required, the following must occur:

(a) The Department must begin recruitment for the child in a timely manner that is appropriate to the child's permanency and concurrent permanency plans; and

(b) The child's caseworker must conduct recruitment activities for at least 30 days prior to identifying the potential adoptive resources to be considered in the adoption selection process.

(5) Recruitment for general applicants is not required when the child or identified sibling group will be adopted by one of the following:

(a) A relative or a sibling's current guardian, relative, current caretaker, or adoptive resource with whom the sibling is current living;

(b) A current caretaker; or

(c) An individual with an emotionally significant relationship to the child or any member of the identified sibling group.

(6) The following must be documented in the Department's information system:

(a) The Department's recruitment efforts for a child or identified sibling group.

(b) When recruitment is not in the best interest of the child or identified sibling group, the basis for a Department decision not to recruit.

Stat. Auth.: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192
Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192
Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0760

Identification of a Child's Potential Adoptive Resources

(1) The child's caseworker must comply with the requirements of all of the following subsections:

(a) Identify adoption home studies for consideration based upon the potential adoptive resource's ability to meet the current and lifelong needs of the child and his or her siblings under each of the following categories:

(A) Physical and emotional safety;

(B) Ability to develop and maintain connections to the child's family;

(C) Continuity and familiarity;

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(D) Appropriate educational, developmental, emotional, and physical support;

(E) Ability of the family to permanently integrate the child into the family;

(F) Stability and permanency; and

(G) Maintaining the child's identity and cultural and religious heritage.

(b) Identify potential adoptive resources that can meet the standards for an adoptive home under OAR 413-120-0246 and can meet the current and lifelong individual needs of the child or identified sibling group.

(c) Select up to three potential adoptive resources for consideration at an Adoption Committee when an Adoption Committee recommendation is required. When one or two potential adoptive resources are available and appear to have the ability to meet the current and lifelong needs of a child, the caseworker may not delay the Adoption Committee to allow for consideration of three potential adoptive resources.

(d) Make reasonable efforts to identify and place the child with an adoptive resource in a timely manner.

(e) Document the efforts made under this section in the Department's information system.

(2) The child's caseworker may:

(a) In consultation with his or her supervisor, involve the birth parent or parents in the selection of each potential adoptive resource, determined on a case-by-case basis; and

(b) Provide the birth parent or parents with non-identifying information from the home study of a potential adoptive resource, when a potential adoptive resource is a general applicant.

Stat. Auth.: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192

Stats. Implemented: ORS 109.309, 418.005, 418.285, 419B.090, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0835

Transition to an Adoptive Home

(1) The transition of a child into an adoptive placement, including sharing of family information with the child, may not begin until the time period for the written request for review as described in OAR 413-120-0060 has expired, or, in the event the DHS Assistant Director of CAF or designee gives notice of the intent to review, until that review is complete.

(2) An exception to section (1) of this rule may be approved by the Adoption Program Manager under either of the following circumstances:

(a) The child attended the adoption committee and an early transition is in the child's best interest; or

(b) When an early transition under OAR 413-120-0840 has been approved.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2007(Temp), f. & cert. ef. 2-26-07 thru 8-24-07; CWP 13-2007, f. & cert. ef. 8-1-07; Administrative correction 9-16-07; Renumbered from 413-120-0075, CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

413-120-0880

No Delay in Placement

(1) When an adoptive resource has been identified, the Department may not delay placement of a child for adoption based on any criteria listed in the following subsections:

(a) On the basis of geographic location; nor

(b) On the basis of the race, color, or national origin of the child or the adoptive resource.

(2) When the child's adoptive resource believes that the Department violated the prohibition under section (1) of this rule, the adoptive resource may file a civil rights complaint and request a review under Child Welfare Policy I-A.1, "Client Rights".

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; Renumbered from 413-120-0045, CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

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**Department of Human Services,
Children, Adults and Families Division:
Self-Sufficiency Programs
Chapter 461**

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients

Adm. Order No.: SSP 18-2010

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 2-1-2010

Rules Adopted: 461-135-1101

Rules Amended: 461-101-0010, 461-110-0210, 461-110-0400, 461-110-0530, 461-110-0630, 461-115-0030, 461-115-0050, 461-115-0230, 461-115-0430, 461-115-0705, 461-120-0010, 461-120-0125, 461-120-0210, 461-135-0400, 461-135-0415, 461-135-0570, 461-135-1100, 461-135-1149, 461-135-1175, 461-145-0040, 461-145-0143, 461-145-0320, 461-145-0820, 461-145-0830, 461-155-0270, 461-155-0500, 461-155-0693, 461-160-0015, 461-160-0620, 461-165-0030, 461-165-0100, 461-165-0180, 461-170-0011, 461-175-0200, 461-175-0300, 461-180-0050, 461-180-0090, 461-180-0120
Rules Repealed: 461-135-0570(T), 461-135-1175(T), 461-175-0200(T)

Subject: OAR 461-101-0010, about the program acronyms the Department uses in the chapter 461 rules is being amended to include the acronym for Healthy KidsConnect (HKC) and to revise the acronym for Continuous Eligibility for OHP-CHP pregnant women (CEC). This rule also is being amended to remove references to the Senior Prescription Drug Assistance Program to comply with Senate Bill 154 (2009 Or. Laws ch. 263) ending the program and repealing its statutory authority.

OAR 461-110-0210 about how the Department determines the composition of a household group (the individuals who live together with or without benefit of a dwelling) is being amended to state the circumstances under which an individual absent from a Healthy KidsConnect (HKC) program household group (the individuals who live together with or without benefit of a dwelling) for 30 days still is considered to be in the household group.

OAR 461-110-0400 about how the Department determines the composition of a filing group (the individuals whose circumstances are considered in the eligibility determination process) is being amended to state which members of the household group (the individuals who live together with or without benefit of a dwelling) are included in a filing group in the Healthy KidsConnect (HKC) program.

OAR 461-110-0530 about how the Department determines the composition of a financial group (the members of the filing group whose income and resources count in determining eligibility and benefits; the filing group being the individuals whose circumstances are considered in the eligibility determination process) is being amended to state which filing group members are included in a financial group in the Healthy KidsConnect (HKC) program. This rule also is being amended to state that in the Extended Medical Assistance (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), Refugee Assistance Medical - Basic (REFM), Medical Coverage for Children in Substitute or Adoptive Care (SAC), and Temporary Assistance for Needy Families (TANF) programs an individual must be eligible for and receive an SSI cash payment to be excluded from the financial group.

OAR 461-110-0630 about how the Department determines the composition of a need group (the individuals whose basic and special needs are used in determining eligibility and benefit level) is being amended to state who is included in a need group in the Healthy KidsConnect (HKC) program.

OAR 461-115-0030 about how the Department determines the date of request used in the eligibility process is being amended to state how the date of request is determined in the Healthy KidsConnect (HKC) program.

OAR 461-115-0050 about when a client must file an application to receive benefits from a Department program is being amended to restate when no new application is required to add an individual to

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a benefit group (the individuals who receive benefits) in the Department's medical assistance programs.

OAR 461-115-0230 about the circumstances that lead the Department to schedule an interview with a client during the process of determining the client's eligibility or for other reasons related to a program is being amended to indicate policies that do not apply in the Healthy KidsConnect (HKC) program. This rule also is being amended to restate that a Supplemental Nutrition Assistance Program (SNAP) applicant who fails to attend a scheduled interview must contact the Department within 30 days of the application filing date to be eligible for benefits. This rule is also being amended to state additional hardship conditions allowing a client to forgo an interview, including: age, disability, and transportation difficulties due to financial hardship.

OAR 461-115-0430 about when the Department periodically re-determines a client's eligibility for benefits is being amended to state the Department re-determines eligibility every 12 months for clients in the Healthy KidsConnect (HKC) program.

OAR 461-115-0705 about the required verifications for eligibility in the Department's medical assistance programs is being amended to state what verifications are required from a client in the Healthy KidsConnect (HKC) program. This rule also is being amended to remove language exempting Oregon Health Plan - Persons Under 19 (OHP-CHP) program clients from the U.S. citizenship verification requirements and to state that a client must verify his or her alien status at each Oregon Health Plan (OHP) program certification. In addition, this rule is being amended to state how a client's earned income is verified during a recertification in the OHP program.

OAR 461-120-0010 about the Oregon residency requirements for an individual to be eligible to receive benefits is being amended to state the residency requirements for a client in the Healthy KidsConnect (HKC) program.

OAR 461-120-0125 about how the Department determines a client's alien status in all of the Department's programs except the Refugee Assistance (REF) and Refugee Assistance Medical (REFM) programs is being amended to state when a qualified non-citizen in the Healthy KidsConnect (HKC) program meets the alien status requirements and to state when a non-citizen in the Department's medical assistance programs meets the alien status requirements. This rule also is being amended to comply with a change in federal guidelines by removing the eight-month limitation on eligibility for Afghan and Iraqi aliens granted Special Immigration Status (SIV) under section 101(a)(27) of the Immigration and Nationality Act and to state that these aliens are qualified non-citizens in all of the Department's programs except the REF and REFM programs. This rule also is being amended to remove references to the Oregon Supplemental Income Program (OSIP) as regular payments under the OSIP program were discontinued effective January 1, 2010 in response to HB 3065 (2009 Or. Laws ch. 849).

OAR 461-120-0210 about when a client is required to provide or apply for a social security number to be eligible for Department programs is being amended to state when a Healthy KidsConnect (HKC) program client is not required to provide or apply for a social security number.

OAR 461-135-1100 about the specific eligibility requirements in the Oregon Health Plan (OHP) program is being amended to state that the definition of private major medical health insurance applies to OAR 461-135-1101 (a new rule about the specific eligibility requirements in the Healthy KidsConnect program for ensuring children have access to affordable health insurance). This rule also is being amended to restate when an Oregon Health Plan - Persons Under 19 (OHP-CHP) program client may have the two-month waiting period waived.

OAR 461-135-1101 is being adopted to state the specific eligibility requirements for the Healthy KidsConnect (HKC) program including: how income is treated, how budgeting is determined, the countable income standard, the citizenship and alien status requirements, that an eligible child is referred to the Office of Private Health Part-

nerships (OPHP), that OPHP enrolls the eligible child in the appropriate category of the HKC program, that the HKC program eligibility period is 12 months, and under what circumstances a child becomes ineligible for the HKC program.

OAR 461-135-1149 about the specific eligibility requirements in the Continuous Eligibility for OHP-CHP pregnant women (CEC) and Continuous Eligibility for Medicaid (CEM) programs, and how continuous eligibility applies to non-Citizen/Alien-Waived Emergent Medical program children is being amended to state that to be eligible for the CEC or CEM program a non-citizen client must meet the alien status requirements of OAR 461-120-0125(4).

OAR 461-145-0143 about how the Department treats federal economic recovery payments when determining a client's eligibility for Department program benefits is being amended to state that \$33 per month are excluded from earned income for clients in the Healthy KidsConnect (HKC) program.

OAR 461-160-0015 about resource limits in eligibility determinations for the Department's programs is being amended to state there is no resource limit for a client in the Healthy KidsConnect (HKC) program. This rule also is being amended in response to federal legislation (The Medicare Improvements for Patients and Providers Act of 2008 (122 Stat. 2503)) to restate the resource limits for clients of the Qualified Medicare Beneficiaries (QMB) program and to state that the resource limit is amended in January of each year based on the low income subsidy for Medicare Part D as published by the Health Resources and Services Administration of the U.S. Department of Health and Human Services.

OAR 461-165-0030 about when a client is prohibited from receiving duplicate or concurrent payments from more than one of the Department's programs is being amended to state that a client may not receive benefits from the Continuous Eligibility for OHP-CHP pregnant women (CEC) and Continuous Eligibility for Medicaid (CEM) programs while receiving a subsidy through the Family Health Insurance Assistance Program (FHIAP) established by ORS 735.720 to 735.740. This rule also is being amended to state that a client may not receive benefits from the CEC, CEM, Extended Medical (EXT), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), Refugee Assistance Medical (REFM), or Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs while receiving health insurance coverage subsidized through the Office of Private Health Partnerships (OPHP) in accordance with ORS 414.826, 414.831, and 414.839.

OAR 461-170-0011 about the changes a client must report is being amended to state the changes a client in the Healthy KidsConnect (HKC) program must report and the deadline for reporting the changes.

OAR 461-180-0090 about the effective date for starting medical benefits for an eligible client is being amended to state that in the Healthy KidsConnect (HKC) program, the Office of Private Health Partnerships (OPHP) determines the effective date for enrolling an eligible child in one of the HKC program categories of coverage. This rule also is being amended to comply with federal law by restating how the Department determines the effective date for starting the Medicare Savings Program (MSP) benefits.

The 21 rule changes described above to implement the recent Healthy Kids legislation (2009 Or. Laws ch. 867, House Bill 2116). The legislation required the Department to put new programs into place effective January 1, 2010 to ensure children in Oregon have affordable health insurance coverage available. Effective January 1, 2010 the Department implemented the Healthy KidsConnect (HKC) program to expand health insurance coverage for children. Eligibility is determined by the Department, and enrollment for HKC is through the Office of Private Health Partnerships (OPHP). The Department also is making these rule changes to make temporary

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rule changes made January 1, 2010, January 26, 2010, and April 1, 2010 permanent.

OAR 461-135-0400 about the specific eligibility requirements for child care payments and the Employment Related Day Care (ERDC) program is being amended to restate when a filing group (the individuals whose circumstances are considered in the eligibility determination process) is not eligible for program benefits.

OAR 461-135-0415 about the requirement for a client in the Employment Related Day Care (ERDC) program to make a copayment to the primary provider of child care is being amended to state how the Department determines the amount of the copayment due from the client to the provider.

OAR 461-135-0570 about how the Department determines if a student is eligible or ineligible for Supplemental Nutrition Assistance Program (SNAP) benefits is being amended in response to a recent change in the Food and Nutrition Service interpretation of federal SNAP law to state that an individual 18 years of age or older and under 50 years of age, enrolled at least half time in higher education, and receiving Training Unemployment Insurance (TUI) benefits from the Oregon Employment Department is eligible for SNAP benefits. This rule also is being amended to make permanent the temporary changes to this rule made effective February 5, 2010.

OAR 461-135-1175 about the Senior Farm Direct Nutrition Program (SFDNP) is being amended to restate the countable income eligibility requirement for the program, state that the Department processes applications for the program in the order in which the applications are received, and state that the program remains open each year until the funding for the program runs out. This rule also is being amended to make permanent the temporary changes to this rule made effective April 1, 2010.

OAR 461-145-0040 about how the Department treats burial arrangements and burial funds when calculating a client's assets is being amended to state how, in the General Assistance (GA), General Assistance Medical (GAM), Oregon Supplemental Income Program (OSIP), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiaries (QMB) programs, the Department treats the amount of an irrevocable arrangement to cover burial costs.

OAR 461-145-0320 about how the Department treats the value of life and burial insurance policies when determining a client's eligibility and benefit level is being amended to define key terms related to life and burial insurance policies and state how the Department treats the value of life and burial insurance policies in the General Assistance (GA), Oregon Supplemental Income Program Medical (OSIPM), and Qualified Medicare Beneficiary (QMB) programs. This rule also is being amended to state how the Department treats a dividend accumulation when determining a client's eligibility. This rule also is being amended to remove unnecessary references to grandfathered Oregon Supplemental Income Program (OSIP) and OSIPM program clients and the OSIP program.

OAR 461-145-0820 about how the Department determines the value of the assets (income and resources) of a sponsor it deems to a sponsored noncitizen is being amended to restate how the Department calculates the value of the resources deemed available to a noncitizen client of the Oregon Supplemental Income Program Medical (OSIPM) program.

OAR 461-145-0830 about when the Department deems assets (income and resources) of a sponsor to the sponsored noncitizen and how the Department deems the income of a sponsor to the sponsored noncitizen is being amended to restate how a sponsored noncitizen establishes indigence in all programs except the Medical Assistance Assumed (MAA), Oregon Health Plan (OHP), Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF) programs. This rule also is being amended to state how long the deeming period lasts and the effective date of the end of deeming for a noncitizen client of the Oregon Supplemental Income Program Medical (OSIPM) program. This rule also is being amended to state that the process used to determine the

amount of income considered available to the noncitizen from the noncitizen's sponsor and the spouse of the sponsor is not applicable to clients in the Employment Related Day Care (ERDC), OSIPM, Refugee Assistance (REF), Refugee Assistance Medical - Basic (REFM), and SNAP programs. This rule also is being amended to state when the income of the sponsor or the sponsor's spouse is not considered available to the sponsored noncitizen and what deductions are made if the income is considered available.

OAR 461-155-0270 about the room and board standard for Oregon Supplemental Income Program Medical (OSIPM) program clients living in a waived community based care setting is being amended to state the standard for a client residing in a community based care facility and restate that the client must pay room and board. This rule also is being amended to remove references to the Oregon Supplemental Income Program (OSIP) and the personal needs standard as use of the personal needs standard was discontinued effective January 1, 2010 in response to House Bill 3065 (2009 Or. Laws ch. 849). This rule also is being amended to make permanent the temporary rule changes effective January 1, 2010.

OAR 461-155-0500 about special needs payments is being amended in response to recent legislation, HB 3065 (2009 Or. Laws ch. 849), to restate the types of ongoing special needs payments the Department may make. This rule also is being amended to remove unnecessary language about types of payments and the basic standard in the General Assistance (GA), General Assistance Medical (GAM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program Medical (OSIPM), Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Assistance for Needy Families (TANF) programs.

OAR 461-155-0693 about the transportation services special need payment for Oregon Supplemental Income Program Medical (OSIPM) program clients is being amended to correctly state the income standard used to determine eligibility for this payment.

OAR 461-160-0620 about the income deductions allowed in and the calculation of an Oregon Supplemental Income Program Medical (OSIPM) client's liability when the client is receiving long-term care or waived services is being amended to remove the reference to the OSIP program maintenance standard and replace it with a reference to the OSIPM maintenance standard as use of the OSIP program standard was discontinued effective January 1, 2010 in response to House Bill 3065 (2009 Or. Laws ch. 849).

OAR 461-165-0100 about the date the Department issues benefits to eligible clients is being amended to remove references to the Oregon Supplemental Income Program (OSIP) and the OSIP program supplemental income payment as the payments were discontinued effective January 1, 2010 in response to HB 3065 (2009).

OAR 461-165-0180 about how the Department determines if a child care provider is eligible to receive payments from the Department is being amended in response to House Bill 2868 (2009 Or. Laws ch. 319) to state when a child care provider must attend a training provided by the Department or a Child Care Resource and Referral agency.

OAR 461-175-0200 which provides general information about the decision notices the Department sends to clients is being amended to remove the requirement that the Department send clients in the Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Refugee Assistance (REF), and Refugee Assistance Medical - Basic (REFM) programs an approval notice informing the client of the opportunity to volunteer for JOBS participation and of the procedure for Job Opportunity and Basic Skills (JOBS) program entry within one month following an eligibility determination. The Department also is amending this rule to implement the recent Healthy Kids legislation (2009 Oregon Laws Chapter 867, House Bill 2116). The legislation required the Department to put new programs into place effective January 1, 2010 to ensure children in Oregon have affordable health insurance coverage available. Effective January 1, 2010 the Department implemented the Healthy Kid-

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sConnect (HKC) program to expand health insurance coverage for children. Eligibility is determined by the Department, and enrollment for HKC is through the Office of Private Health Partnerships (OPHP). OAR 461-175-0200 which provides general information about the decision notices the Department sends to clients is being amended to remove its statement about when the Department need not send a decision notice to a client in the prenatal expansion program. A decision notice is a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program. This rule also is being amended to make temporary rule changes made effective February 23, 2010 permanent.

OAR 461-175-0300 about the requirements for when the Department must provide an additional decision notice (a written notice of a decision by the Department regarding an individual's eligibility for benefits) at the time of changes in a program to a client's benefits when the Department previously has sent the client notice is being amended to revise the situations in which no additional decision notice may be sent as well as the situations in which a decision notice may be sent but not a timely decision notice.

OAR 461-180-0050 about the effective dates for closing or suspending benefits in the Department's programs and OAR 461-180-0120 about the effective dates for removing an individual from a benefit group (the individuals who receive benefits) are being amended to state when program benefits end or are reduced in the event that an individual in the benefit group dies. OAR 461-180-0050 also is being amended to remove references to effective dates for closing or suspending benefits when prospective budgeting is used.

Rules Coordinator: Annette Tesch—(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 (for instance, OSIP) and acronyms for each subprogram (for instance, OSIP-AB, OSIP-AD, and OSIP-OAA).

(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 (for instance, OSIP means OSIP-AB, OSIP-AD, and OSIP-OAA).

(4) ADC; Aid to Dependent Children. Financial aid to low-income families when children are deprived of parental support because of continued absence, death, incapacity, or unemployment. When used alone, ADC refers to all ADC programs. Use of the acronym, ADC, which stands for Aid to Dependent Children, and use of the phrase, Aid to Dependent Children, refer to the state's Temporary Assistance for Needy Families Program, and its acronym, TANF. The following codes are used for ADC subprograms:

(a) ADC-BAS; Aid to Dependent Children - Basic (includes eligibility based on continued absence, death, incapacity, or unemployment). ADC with deprivation based on unemployment is also denoted by ADC-BAS/UN.

(b) EA; Aid to Dependent Children - Emergency Assistance. Emergency cash to families without the resources to meet emergent needs.

(5) ADCM; Aid to Dependent Children Medical. Medical aid to low-income families when children are deprived of parental support, as for ADC. Use of the acronym ADCM, which stands for Aid to Dependent Children Medical, and use of the phrase Aid to Dependent Children Medical refer to EXT, MAA, MAF, and SAC programs. When used alone, ADCM refers to all ADC-related medical programs. The following codes are used for ADCM subprograms:

(a) ADCM-BAS; Aid to Dependent Children Medical - Basic.

(b) ADCM-EXT; Aid to Dependent Children Medical - Extended. ADCM-EXT provides extended medical benefits to families after their ADC benefits end.

(c) ADCM-SAC; Aid to Dependent Children Medical - Substitute or Adoptive Care. ADCM-SAC gives medical coverage to children in substitute or adoptive care.

(6) The Assessment Program (see the Pre-TANF program in this rule).

(7) BCCM; Breast and Cervical Cancer Medical program.

(8) 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.

(9) CEC; Continuous Eligibility for OHP-CHP pregnant women. Title XXI medical assistance for a pregnant non-CAWEM child found eligible for the OHP-CHP program who, for a reason other than moving out of state or becoming a recipient of private major medical health insurance, otherwise would lose her eligibility. The pregnant individual is deemed eligible for OHP-CHP through the last day of the month in which the pregnancy ends.

(10) CEM; Continuous Eligibility for Medicaid. Title XIX medical assistance for a non-CAWEM child found eligible for Medicaid who loses his or her eligibility for a reason other than turning 19 years of age or moving out of state. The child is deemed eligible for Medicaid for the remainder of the 12 month eligibility period.

(11) 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.

(12) ERDC or ERDC-BAS; Employment Related Day Care-Basic. Helps low-income working families pay the cost of child care.

(13) EXT; Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the MAA, MAF, or Pre-TANF program due to an increase in their child support or earned income.

(14) FS; Food Stamps. Helps low-income households maintain proper nutrition by giving them the means to purchase food. Any reference to Food Stamps or FS also includes the Supplemental Nutrition Assistance Program or SNAP.

(15) GA; General Assistance. Cash assistance to low-income individuals with disabilities who do not have dependent children.

(16) GAM; General Assistance Medical. Medical assistance to clients who are eligible for the GA program but have not been found eligible for OSIPM benefits.

(17) HKC; Healthy KidsConnect. A program administered by the Office of Private Health Partnerships (OPHP) providing access to health care for children not eligible for any of the Department's other medical assistance programs. The Department determines eligibility and OPHP manages enrollment.

(18) 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.

(19) 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.

(20) 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) ADC-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.

(21) 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.

(22) MAA; Medical Assistance Assumed. The Medical Assistance Assumed program provides medical assistance to people who are eligible for the Pre-TANF program or ongoing TANF benefits.

(23) MAF; Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996.

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(24) 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.

(25) OHP; Oregon Health Plan. The Oregon Health Plan Program provides medical assistance to many low-income individuals and families. The program includes five categories of people who may qualify for benefits. The acronyms for these categories are:

(a) OHP-OPU; Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/noncategorical (HPN) client.

(b) OHP-OPC; Children. OHP coverage for children who qualify under the 100 percent income standard.

(c) OHP-OP6; Children Under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard.

(d) OHP-OPP; Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children.

(e) OHP-CHP; Persons Under 19. OHP coverage for persons under age 19 who qualify under the 185 percent income standard for medical assistance authorized by the Children's Health Insurance Program (CHIP) provision of the 1997 Balanced Budget Act.

(26) 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.

(27) 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

(28) 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.

(29) 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.

(30) 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.

(31) REF; Refugee Assistance. Cash assistance to low-income refugee singles or married couples without children.

(32) REFM or REFM-BAS; Refugee Assistance Medical - Basic. Medical coverage for low-income refugees.

(33) The Repatriate Program helps Americans resettle in the United States if they have left a foreign land because of an emergency situation.

(34) SAC; Medical Coverage for Children in Substitute or Adoptive Care.

(35) SFDNP; Senior Farm Direct Nutrition Program. Food vouchers for low income seniors. Funded by a grant from the United States Department of Agriculture.

(36) 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).

(37) 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.

(38) TA-DVS; Temporary Assistance for Domestic Violence Survivors. Addresses the needs of clients threatened by domestic violence.

(39) 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. Cash assistance used to be known as ADC.

Stat. Auth.: 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

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

461-110-0210

Household Group

(1) The household group consists of the individuals who live together with or without benefit of a dwelling. For homeless people, the household group consists of the individuals who consider themselves living together.

(2) A separate household group is established for all the individuals who live in a dwelling. A separate dwelling is not recognized for the purpose of determining the members of a household group unless the living space has — separate from other dwellings — an access to the outside that does not pass through another dwelling, a sleeping area, a bathroom, and a kitchen facility.

(3) 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 are true:

(a) There is a landlord-tenant relationship between the two 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:

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(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.

(4) 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 MAA, MAF, and TANF programs:

(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 OAR 461-001-0000), the parent is in the same household group as the dependent child.

(B) A dependent child is included in the 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.

(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 shelter, the resident may be included both in the household he or she left and in a household group in the shelter.

(5) In the OSIPM program, individuals receiving waived care or nursing facility care are each an individual household group.

(6) In the QMB program, the household group consists of the client and the client's spouse (see OAR 461-001-0000), even if the spouse does not meet all nonfinancial eligibility requirements.

(7) The individuals in the household group who apply for benefits are called applicants. The household group and applicants form the basis for determining who is in the remaining eligibility groups.

(8) Individuals absent from the household for 30 days or more are no longer part of the household, except for the following:

(a) In all programs except the SNAP program, individuals in a general hospital for 30 days or more remain in the household group unless they go into long-term care. In the SNAP program, these individuals are no longer in the household group.

(b) In the CEC, CEM, ERDC, EXT, HKC, MAA, MAF, OHP, REF, REFM, SAC, 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; or

(iii) For OHP only, in a residential alcohol or drug treatment facility. If the household of the child is ineligible because of income, the child is a separate household.

(c) In the ERDC, HKC, and OHP programs, an individual who is absent because of education, training, or employment, including long-haul truck driving, fishing, and active duty in the U.S. armed forces.

(d) In the MAA, MAF, REF, REFM, and TANF programs, a parent who is absent for 30 days or more is in the household group if:

(A) The parent is absent because of education, training or employment — including absence while working or looking for work outside the area of their residence, such as long-haul truck driving, fishing and active duty in the U.S. armed forces; and

(B) The other parent remains in the home.

(9) 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, 411.704, 411.706, 411.816, 412.049, 414.025, 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, 414.826, 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 38-2009, 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

461-110-0400

Filing Group; HKC, OHP

In the HKC and OHP programs, filing groups are formed from the household group as follows:

(1) A person constitutes a filing group if not required by this rule to be in a filing group with another person.

(2) The following people must be in the same filing group, even if they are not applicants or do not meet all nonfinancial eligibility requirements:

(a) People married to each other and each child of either spouse.

(b) With respect to a child or unborn, the parents of the child or unborn and the children of each parent.

(c) Siblings under 19 years of age.

(3) A child whose caretaker relative is not the child's parent may constitute a separate filing group or may be in a group with the caretaker relative, at the option of the caretaker relative.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 414.025, 414.231, 414.826, 414.831

Stats. Implemented: ORS 411.060, 411.070, 411.404, 414.025, 414.231, 414.826, 414.831

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; 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

461-110-0530

Financial Group

(1) Except as provided in section (5) of this rule, "financial group" means the *filing group* members whose income and resources count in determining eligibility (see OAR 461-001-0000) and benefits.

(2) In the EXT, MAA, MAF, REF, REFM, and SAC 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.

(3) In the HKC and OHP programs, the financial group consists of each individual in the filing group (including those receiving SSI benefits), except a caretaker relative (other than a parent) who chooses not to be included in the need group.

(4) In the OSIP program:

(a) When an individual lives in a standard living arrangement (see OAR 461-001-0000), each member of the filing group (see OAR 461-110-0410) is in the financial group.

(b) When an individual lives in a nonstandard living arrangement (see OAR 461-001-0000), the financial group is determined under subsection (5)(c) of this rule.

(5) In the OSIPM 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:

(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 is not assumed eligible (see OAR 461-135-0010) for OSIPM:

(i) The individual's spouse who is ineligible and in the filing group is not in the financial group if the individual's adjusted income (see OAR 461-001-0000) using the deductions allowed under OAR 461-160-0550(3) is greater than the OSIPM program adjusted income standard for a need group of one under OAR 461-155-0250. The financial group consists only of the individual.

(ii) If the ineligible spouse's remaining income after allocation (see OAR 461-160-0551) to each ineligible child is equal to or less than the dif-

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ference between the couple and the individual SSI standards: the spouse who is ineligible is not considered to be in the financial group when determining income eligibility; however, the spouse is considered to be in the financial group when determining resource eligibility.

(c) When an individual lives in a nonstandard living arrangement, the financial group consists only of the individual applying for benefits, except that the community spouse (see OAR 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 OAR 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.

(6) 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 (see OAR 461-001-0000) 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(1)(b); and

(e) An individual who is eligible for and receives an SSI cash payment.

(7) For all programs other than EXT, HKC, MAA, MAF, OHP, OSIP, OSIPM, REF, REFM, SAC, and TANF, the financial group consists of each individual in the filing group.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.006, 412.049, 412.064, 412.124, 414.025, 414.231, 414.712, 414.826, 414.831, 414.839

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

461-110-0630 Need Group

(1) The need group consists of the individuals whose basic and special needs are used in determining eligibility and benefit level.

(2) In the EA, REF, and REFM programs, the need group consists of the members of the financial group (see OAR 461-110-0530) who meet all nonfinancial eligibility requirements, except that members disqualified for an intentional program violation are not in the need group.

(3) In the ERDC, OSIP-EPD, OSIPM-EPD, QMB, and SAC programs, the need group consists of each member of the financial group.

(4) In the EXT program, the need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.

(5) In the SNAP program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements, except the following people are not in the need group:

(a) A member disqualified for an intentional program violation.

(b) A fleeing felon under OAR 461-135-0560.

(c) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(6) In the GA and GAM programs, the need group consists of each member of the financial group except that the following individuals may not be in the need group:

(a) A fleeing felon under OAR 461-135-0560.

(b) An individual in violation of a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(c) An individual not complying with social security number requirements under OAR 461-120-0210.

(7) In the MAA and TANF programs, the need group is formed as follows:

(a) Except as provided in subsection (b) of this section, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizenship and alien status

requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705.

(b) The need group cannot include:

(A) A parent who is in foster care and for whom foster care payments are being made.

(B) An unborn child.

(C) In the TANF program:

(i) An individual who cannot be in the need group because of a disqualification penalty.

(ii) An individual who cannot be in the need group because the individual has exceeded the 60-month time limit and does not meet any of the exceptions listed in OAR 461-135-0075.

(iii) A fleeing felon under OAR 461-135-0560.

(iv) An individual violating a condition of state or federal parole, probation, or post-prison supervision under OAR 461-135-0560.

(8) In the MAF program, the need group consists of the members of the financial group who meet all nonfinancial eligibility requirements other than the citizen and alien status requirements of OAR 461-120-0110 or the citizenship documentation requirements of OAR 461-115-0705, except for the following individuals:

(a) A parent who is in foster care and for whom foster care payments are being made.

(b) The father of an unborn child who has no eligible dependent children.

(9) In the HKC and OHP programs:

(a) An unborn child of a pregnant female is included in the need group.

(b) The need group consists of each member of the financial group except an individual excluded from the need group for not complying with social security number requirements under OAR 461-120-0210.

(10) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs:

(a) If a child is applying, the need group consists of the child.

(b) In all other situations, the need group consists of each member of the financial group.

Stat. Auth.: 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

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 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 6-1991(Temp), f. & cert. ef. 2-8-91; AFS 13-1991, f. & cert. ef. 7-1-91; 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 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; 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 17-2004, f. & cert. ef. 7-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 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 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 13-2009, f. & cert. ef. 7-1-09; 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

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, HKC, MAA, MAF, OHP, OSIPM, REFM, and SAC programs, the date of request is determined as follows:

(A) For a new applicant:

(i) The day the request for medical benefits is received by a Department representative, except as described in subparagraphs (ii) and (iii) of this paragraph.

(ii) 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.

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(iii) An individual's request to be placed on the OHP Standard Reservation List (see OAR 461-135-1125) does not establish a date of request for medical benefits.

(B) For a current recipient, the date of request is one of the following:

(i) The date the client reports a change requiring a redetermination of eligibility.

(ii) The date the Department initiates a review, except that the automatic mailing of an application does not constitute a Department-initiated review.

(iii) The date the client establishes a date of request by contacting the Department orally or in writing or by submitting an application.

(d) 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

461-115-0050

When an Application Must Be Filed

(1) A client must file an application, or may amend a completed application, as a prerequisite to receiving benefits as follows:

(a) A client 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, a client 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.

(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 a client is ineligible in the month of application and to determine the client 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 OAR 461-180-0080.

(b) In all programs except the SNAP program, when a single application can be used both to determine a client is ineligible on the date of request (see OAR 461-115-0030) and to determine the client 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.

(f) When the Department determines a child under the age of 19 years with a date of request from July 1, 2009 through December 31, 2009 is not eligible for EXT, MAA, MAF, OHP, OSIPM, QMB, or SAC program ben-

efits for a reason other than failure to complete the application requirements under OAR 461-115-0020, and the Department chooses to redetermine the child's eligibility for EXT, MAA, MAF, OHP, OSIPM, QMB, and SAC program benefits under the administrative rules in effect on October 1, 2009 and January 1, 2010.

(3) When a client 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 client'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 client'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."

(b) In the CEC, CEM, EXT, HKC, MAA, MAF, OHP, and REFM programs, 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.

(c) In the CEC, CEM, EXT, GAM, HKC, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs, no additional application is required to add an assumed eligible newborn to a benefit group currently receiving Department medical program benefits.

(d) In the ERDC and SNAP programs, an application is not required to add the child to the benefit group.

(e) In all programs other than CEC, CEM, ERDC, EXT, GAM, HKC, MAA, MAF, OHP, QMB, REF, REFM, SAC, 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 EXT, HKC, MAA, MAF, OHP, REF, REFM, SAC, 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, EXT, HKC, MAA, MAF, OHP, REF, REFM, SAC, SNAP, and TANF programs, a new application is required.

(6) A client whose TANF grant is closing may request ERDC orally or in writing.

(7) Except for an applicant for the SNAP program, a client may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client 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 client is eligible for the first program.

(8) In the CEC, CEM, EXT, HKC, MAA, MAF, OHP, OSIP, OSIPM, and QMB programs, a new application is not required to redetermine eligibility if the following conditions are met:

(a) The client 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, 414.831, 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, 414.831, 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 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;

ADMINISTRATIVE RULES

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

461-115-0230

Interviews

(1) In all programs except the BCCM, HKC, MAA, MAF, OHP, and SAC programs, 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 (3) of this rule) for the household.

(2) In the SNAP program:

(a) When a household meets the expedited services criteria, an interview may be postponed in accordance with OAR 461-115-0690.

(b) An interview must be scheduled so that the household has at least ten days to provide any needed verification before the deadline under OAR 461-115-0210.

(c) A face-to-face interview must be granted at the applicant's request.

(d) When an applicant misses the first scheduled interview appointment, the Department must inform the applicant by regular mail of the missed interview.

(e) 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.

(f) Each client is interviewed face-to-face prior to initial certification and at least once every 12 months, except under the following circumstances:

(A) When a current hardship condition (see section (3) of this rule) is identified.

(B) The household meets either of the following criteria at recertification:

(i) Each adult member is elderly or meets the SNAP program definition of an individual with a disability (see OAR 461-001-0015), and there is no earned income; or

(ii) Each member of the SNAP program filing group (see OAR 461-110-0370) is receiving TANF or SFPSS program cash benefits.

(3) For the purposes of this rule, hardship conditions include, but are not limited to:

(a) Care of a household member;

(b) A client's age, disability, 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.

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. & 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

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 BCCM, GA, GAM, and HKC programs, the Department determines eligibility each 12 months.

(2) In the MAA, MAF, and SAC programs, the Department redetermines eligibility at least once every 12 months.

(3) 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.

(4) 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 MAA, MAF or OSIPM, a redetermination for QMB is completed with the redetermination of the other program.

(5) 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.

(6) In the TANF program, the Department redetermines eligibility according to the following schedule:

(a) For a client not participating in the JOBS program — at least once every six months.

(b) For a client participating in the JOBS program — at least once every 12 months.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 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, 412.049, 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

461-115-0705

Required Verification; BCCM, HKC, MAA, MAF, OHP, SAC

(1) This rule establishes verification requirements for the BCCM, HKC, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except as provided in section (3) of this rule, each client declaring U.S. citizenship must provide acceptable documentation of citizenship and identity. For purposes of this rule, acceptable documentation consists of any of the documents permitted under section 1903(x) of the Social Security Act (42 U.S.C. 1396b).

(a) A new applicant must provide acceptable documentation as a condition of eligibility (see OAR 461-001-0000). Except for an applicant whose medical benefits previously were closed after March 31, 2009 for not providing acceptable documentation, an applicant's medical assistance may not be delayed for citizenship documentation while the eligibility decision is pending if all other medical assistance eligibility requirements have been met.

(b) A current recipient who has not already provided acceptable documentation must provide acceptable documentation as a condition of eligibility when requested by the Department.

(c) A client who already has provided acceptable documentation is not required to provide additional evidence during a subsequent application for benefits or redetermination of eligibility.

(3) Each of the following clients is exempt from the requirements of section (2) of this rule, a client who is:

(a) Assumed eligible under OAR 461-135-0010(5);

(b) Eligible for or receiving Medicare;

(c) Presumptively eligible for the BCCM program;

(d) Receiving Social Security Disability Income (SSDI); or

(e) Receiving Title IV-E benefits.

(4) In the OHP program:

(a) At initial application and at any other time it affects the client, the following must be verified:

(A) The requirement in OAR 461-120-0210 to have or apply for a social security number.

(B) Alien status for an applicant who indicates he or she is not a U.S. citizen, and for a client who meets the alien status requirement under OAR 461-120-0125(4)(b) the client's alien status must be verified at each certification.

(C) The OHP-OPU program premium exemption allowed because a client is:

(i) A member of a federally recognized Indian tribe, band, or group;

(ii) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

(iii) An individual eligible for benefits through an Indian Health Program.

(D) Income from the month prior to the budget month and income already received in the budget month. If income cannot be verified, the client's statement is accepted.

(b) At recertification, the following must be verified, except that if income cannot be verified, the client's statement is accepted:

(A) Unearned income if it has changed since the last certification.

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(B) Earned income from the budget month and month prior to the budget month. If income has not been received at the time the application initially is processed, income must be anticipated.

(c) A client enrolled full time in higher education must provide verification, at application and recertification, that the client meets the requirements of OAR 461 135 1110.

(d) The following must be verified when it is first reported or changed:

(A) Pregnancy of the client, which must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or like facility.

(B) Amount of the premium for cost-effective employer-sponsored health insurance.

(e) A client must provide verification for any eligibility requirement questioned by the Department.

Stat. Auth: ORS 411.060, 411.404, 411.704, 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, 411.816, 412.049, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; 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 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; Suspended by SSP 13-2006(Temp), f. & cert. ef. 9-25-06 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 8-2008, f. & cert. ef. 4-1-08; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; 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 17-2010(Temp), f. & cert. ef. 5-28-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10

461-120-0010

Residency Requirements

(1) To be eligible for benefits, an individual must be a resident of Oregon.

(2) 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, he or she must intend to remain in Oregon except in the following situations:

(a) EA may be issued to help a client return to a former state of residence.

(b) SNAP does not require intent to remain to establish residency.

(c) In the HKC, MAA, MAF, OHP, SAC, and TANF programs, an individual is considered a resident if he or she entered Oregon with a job commitment or looking for work, and is not receiving benefits from another state.

(4) In the SAC program, Oregon is the state of residence for a child who is living in Oregon and receiving Title IV-E substitute care, even though all or part of his or her maintenance costs are paid by a public agency in another state.

(5) An individual is not a resident if he or she is in Oregon solely for a vacation.

(6) 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

461-120-0125

Alien Status; Not REF or REFM

In all programs except the REF and REFM programs:

(1) For purposes of this chapter of rules, an individual is a “qualified non-citizen” if he or she 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. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a “Cuban and Haitian entrant” (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) 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) An individual meets the alien status requirements if he or she 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 and TANF programs, an individual meets the alien status requirements if he or she 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 BCCM, CEC, CEM, EXT, HKC, MAA, MAF, OHP, OSIPM, QMB, and SAC programs:

(a) A qualified non-citizen meets the alien status requirements if he or she 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 he or she 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 he or she 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

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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 he or she 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 and TANF programs, a qualified non-citizen meets the alien status requirement if he or she 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 (9) of this rule.

(7) Except as provided in section (2), subsections (3)(e) and (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 BCCM, MAA, MAF, OHP, OSIPM, QMB, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(8) In the SNAP program, an individual meets the alien status requirement if he or she is one of the following:

(a) An individual granted any of the following alien statuses--

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A “victim of a severe form of trafficking in persons” certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who has a disability, as defined in OAR 461-001-0015.

(9) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the SNAP program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means tested benefits include SNAP, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she 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, 414.025, 414.042, 414.231, 414.826, 414.831

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.042, 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

ADMINISTRATIVE RULES

461-120-0210

Requirement to Provide or Apply for 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 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 OSIP, OSIPM, and QMB programs, 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 all programs not covered by sections (1) to (3) of this rule, 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 BCCM, CEC, CEM, EXT, GA, GAM, HKC, MAA, MAF, OHP, OSIP, OSIPM, QMB, SAC, and SNAP programs, an individual is not required to apply for or provide an SSN if the individual is:

(a) A member of 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 BCCM, CEC, CEM, EXT, MAA, MAF, OHP, and SAC programs, a newborn who is assumed eligible based on the eligibility of the mother of the newborn may receive benefits until one year of age without meeting the SSN requirements of section (4) of this rule.

(b) 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.

(B) Before applying for or providing an SSN, a newborn may be added to an existing benefit group (see OAR 461-110-0750) for six months following the date the baby is born or until the group's next recertification, whichever is later.

(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, 411.704, 411.706, 411.816, 412.049, 414.025, 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, 414.826, 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

461-135-0400

Specific Requirements; ERDC

(1) The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules.

(2) To be eligible for ERDC, a *filing group* (see OAR 461-110-0350) must meet the requirements of all of the following subsections:

(a) At least one caretaker (see OAR 461-001-0000) must receive income from employment (other than self-employment, see OAR 461-145-0910), including employment through a work study program.

(b) The filing group must include a child who needs child care.

(c) The filing group must have an allowable child care need as described in OAR 461 160 0040. If there are two adults required to be in the filing group, and one of the adults is unemployed or self-employed, the unemployed or self-employed adult is considered available to provide child care, making the filing group ineligible, except in the following situations:

(A) The unemployed adult is physically or mentally unable to provide adequate child care.

(B) The unemployed adult is unavailable to provide child care while participating in the requirements of a case plan (see OAR 461-001-0025) other than requirements associated with post-secondary education.

(d) The filing group must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(e) The child needing child care must meet the citizenship or alien status requirements of OAR 461-120-0110.

(3) A filing group is not eligible for a child care payment for more than six calendar months if the filing group is unwilling to obtain a Certificate of Immunization Status for the child.

(4) The child care must be necessary to enable the caretaker to remain employed (other than self-employed).

(5) A *filing group* is not eligible for child care when the caretaker or parent in the filing group receives a grant for child care from the Oregon Student Assistance Commission for any month the grant is intended to cover, regardless of when the grant is received.

Stat. Auth.: ORS 409.050, 409.610, 411.060, 411.070

Stats. Implemented: ORS 409.050, 409.610, 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 18-2010, f. & cert. ef. 7-1-10

461-135-0415

Requirement to Make Copay or Satisfactory Arrangements; ERDC

In the ERDC program:

(1) The caretaker is responsible for paying the copayment to the primary provider of child care unless the ERDC filing group received TANF benefits the previous month and the Child Care Billing form was sent to the provider showing no copayment.

(2) If the client has only one provider during a month, that provider is the primary provider. If the client uses more than one provider, the client must designate one as the primary provider. Notwithstanding any designation by the client, the Department considers a provider having the copayment amount (not to exceed the client's established copayment amount) deducted from its valid billing statement the primary provider for that period.

(3) If the copayment exceeds the amount billed by the primary provider, the Department may treat a different provider as the primary provider or split the copayment among the providers who bill for care.

(4) The copayment amount due from the caretaker to the provider is the lesser of:

(a) The copayment amount determined by the Department based on family size and income.

(b) The total amount allowed by the Department on a provider claim.

(5) A client who fails to pay a copayment to or to make satisfactory arrangements with the primary provider is ineligible for ERDC if the

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provider notifies the Department of an overdue copayment within 60 days after the Department issues payment for the month at issue. The period of ineligibility ends under any of the following circumstances:

(a) On the first day of the month in which the client makes the copayment or makes satisfactory arrangements with the provider.

(b) On the first day of the month after three years have lapsed from the date the client failed to make the copayment.

(c) On the first day of the month in which the client provides verification that the copayment debt was discharged by a bankruptcy filing.

(6) The Department will make the payment to a provider if a Child Care Billing form is mailed to the provider prior to the notification described in section (5) of this rule.

Stat. Auth.: ORS 409.050, 409.610, 411.060, 411.070, 411.122

Stats. Implemented: ORS 409.050, 409.610, 411.060, 411.070, 411.122

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 18-2010, f. & cert. ef. 7-1-10

461-135-0570

Eligible and Ineligible Students; SNAP

In the SNAP program:

(1) For the purposes of this rule and OAR 461-001-0015, higher education includes the following:

(a) Public and private universities and colleges and community colleges that offer degree programs regardless of whether a high school diploma is required for the program. However, GED, ABE, ESL and high school equivalency programs at those institutions are not considered higher education.

(b) Vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the curriculum or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(2) An individual 18 years of age or older, but under the age of 50 years, who is enrolled at least half time in higher education is ineligible to receive SNAP program benefits, unless one of the following is true:

(a) The student is:

(A) A paid employee (see OAR 461-001-0015) working an average of 20 hours or more per week except as excluded by section (5) of this rule; or

(B) Self-employed for a minimum of 20 hours per week and receives weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

(b) The student is participating in a state or federally funded work-study program, is assigned to a work-study position, and will perform work in a work-study job in the current term or semester. The period of eligibility for a student eligible because of this subsection:

(A) Begins with the month in which school begins or with the month that work study is approved, whichever is later.

(B) Continues for the duration of the term or semester, unless the student refuses a work-study job.

(C) Continues through breaks of less than a month. For breaks of a month or longer, eligibility continues only if the student performs work in a work-study job during the break.

(c) The student is responsible for the care of a child in the filing group (see OAR 461-110-0370), and the child is--

(A) Under six years of age; or

(B) Six years of age or older, but under the age of 12 years, and adequate child care is not available to enable the student to both attend class and meet the employment requirements of sub-section (a) of this section or the work-study requirements of sub-section (b) of this section.

(d) The student is enrolled full time in higher education and is a single parent (meaning there is only one parent in the filing group) or a single adult who has parental control, with the responsibility of caring for a child under 12 years of age.

(e) The student is in a TANF benefit group (see OAR 461-110-0750).

(f) The student is physically or mentally unfit for employment.

(g) The student is in job training classes under the Workforce Investment Act of 1998 (Pub. L. 105-220).

(h) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974, 19 U.S.C. 2296.

(i) The student is receiving Oregon Employment Department Training Unemployment Insurance (TUI) benefits.

(j) The student is enrolled as a result of participation in the higher education component of the JOBS program.

(k) The student is enrolled as a result of employer-sponsored on-the-job training.

(3) A student's enrollment status continues during school vacation and breaks. A student's enrollment status ends when the student graduates, drops out (as verified by the student disenrolling), is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

(4) A student residing in a dormitory or other living situation with meal plans is ineligible for SNAP program benefits.

(5) The following situations do not earn the student hours toward the 20 hours per week requirement in section (2) of this rule:

(a) Income that is considered educational income under OAR 461-145-0150, including income from work in the following:

(A) An externship (see OAR 461-001-0015);

(B) A graduate assistantship (see OAR 461-001-0015);

(C) A graduate fellowship (see OAR 461-001-0015); or

(D) An internship (see OAR 461-001-0015).

(b) Receiving in-kind payments in lieu of actual wages.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.060, 411.816, 411.825

Stats. Implemented: ORS 411.060, 411.816 & 411.825

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 3-2002(Temp), f. 2-26-02, cert. ef. 3-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 2-2010(Temp), f. & cert. ef. 2-5-10 thru 8-4-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 6-2010(Temp), f. & cert. ef. 4-1-10 thru 8-4-10; SSP 18-2010, f. & cert. ef. 7-1-10

461-135-1100

Specific Requirements; OHP

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule, OAR 461-135-1101, and 461-135-1149, the term private major medical health insurance refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than \$10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program.

(2) To be eligible for OHP, a person cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be eligible for Medicare, except that this requirement does not apply to OHP OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, a person must be 19 years of age or older and may not be pregnant. A person eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) May not be covered by private major medical health insurance and may not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if--

(A) The person has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized through FHIAP; or

(D) A member of the person's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461 135 1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120.

(D) Selection of a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the HPN client is exempted by OAR 410-141-0060.

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(E) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(4) To be eligible for the OHP-OPC program, a person must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, a person must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, a person must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP, or OHP-OP6;

(b) Meet budgeting requirements of OAR 461-160-0700;

(c) Select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(d) Not be covered by private major medical health insurance or by any private major medical health insurance during the preceding two months. The two-month waiting period is waived if--

(A) The person has a condition that, without treatment, would be life threatening or cause permanent loss of function or disability;

(B) The loss of health insurance was due to the loss of or a change in employment;

(C) The person's private health insurance premium was reimbursed under OAR 461 135 0990;

(D) The person's private health insurance premium was through FHIAP or the Office of Private Health Partnerships (OPHP) in accordance with ORS 414.231, 414.826, 414.831, and 414.839; or

(E) A member of the person's filing group was a victim of domestic violence.

(8) A child who becomes ineligible for OHP because of age while receiving in patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 36-2009(Temp), f. & cert. ef. 12-1-09 thru 12-31-09; 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 9-2010(Temp), f. & cert. ef. 4-21-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10

461-135-1101

Specific Requirements; Healthy KidsConnect (HKC)

In addition to the eligibility requirements applicable to the HKC program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the HKC program.

(1) To be eligible for HKC, an individual must be under 19 years of age and may not be covered by private major medical health insurance (see OAR 461-135-1100) or by any private major medical health insurance during the preceding two months. The two-month waiting period is waived if:

(a) The individual has a condition that, without treatment, would be life-threatening or cause permanent loss of function or disability;

(b) The loss of health insurance was due to a change in employment;

(c) The individual's private health insurance premium was reimbursed under OAR 461-135-0990;

(d) The individual's private health insurance premium was subsidized by FHIAP or by the Office of Private Health Partnerships (OPHP); or

(e) A member of the individual's filing group was a victim of domestic violence.

(2) Income treatment and availability of income requirements used for determining HKC program eligibility are the same as used for the OHP-CHP program in this chapter of the administrative rules.

(3) Budgeting for HKC program eligibility follows the same methodologies as those used for the OHP-CHP program under OAR 461-150-0055.

(4) The countable income standard for the HKC program is at or above 201 percent of the federal poverty limit, in accordance with ORS 414.231 and 414.826.

(5) To be eligible for the HKC program, a child must be a U.S. citizen or meet the alien status requirements as provided in OAR 461-120-0125.

(6) Once approved for the HKC program, the child is referred to OPHP in accordance with ORS 414.231, 414.826, 414.831, and 414.839. OPHP may enroll the child in one of the following program categories:

(a) Healthy KidsConnect Employer Sponsored Insurance (ESI);

(b) Healthy KidsConnect subsidy; or

(c) Healthy KidsConnect full pay.

(7) The eligibility period for the HKC program is a 12-month period. Once a child is approved as eligible for the HKC program, the child is referred to OPHP for enrollment. The enrollment period begins on the date OPHP enrolls the child and may continue through the remainder of the 12-month eligibility period.

(8) A child found eligible for the HKC program under this rule becomes ineligible if any of the following occur:

(a) The child reaches 19 years of age.

(b) The child begins coverage under private major medical health insurance and the insurance is not provided through a contract with OPHP.

(c) The child becomes a resident of a state other than Oregon.

(d) The child's share of the HKC program insurance premium is not paid.

(e) OPHP determines the child no longer qualifies for enrollment through OPHP.

(f) The Department determines the child does not meet the requirements for eligibility, including but not limited to the child's failure to re-enroll in the HKC program before the end of the HKC program eligibility period.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 414.025, 414.231, 414.826, 414.831, 414.839
Stats. Implemented: ORS 411.060, 411.070, 411.404, 414.025, 414.231, 414.826, 414.831, 414.839

Hist: 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

461-135-1149

Specific Requirements; Continuous Eligibility for Non-CAWEM Children; CEC

(1) "Continuous eligibility for non-CAWEM children" means a non-CAWEM child under 19 years of age the Department determines is eligible for Medicaid or OHP-CHP is deemed to be eligible for a total of 12 months regardless of any change in circumstances, other than:

(a) Moving out of state;

(b) Turning 19 years of age, however a pregnant individual who turns 19 years of age remains eligible for OHP-CHP through the last day of the month during which the pregnancy ends; or

(c) In the OHP-CHP program, receipt of private major medical health insurance.

(2) When a pregnant non-CAWEM child is eligible for and receiving OHP-CHP program benefits loses this eligibility, her medical assistance continues through the CEC program through the last day of the month in which the pregnancy ends as long as she is not a recipient of private major medical health insurance (see OAR 461-135-1100).

(3) To be eligible for the CEC program, a client must meet the requirements of all of the following subsections:

(a) Be a U.S. citizen or meet the requirements in OAR 461-120-0125(4);

(b) Be under 20 years of age;

(c) Lose eligibility for OHP-CHP program medical benefits while pregnant; and

(d) Not be a recipient of private major medical health insurance.

(4) CEC program eligibility ends:

(a) The last day of the month in which the pregnancy ends;

(b) When the client moves out of state;

(c) When the client voluntarily ends OHP-CHP program benefits;

(d) When the client becomes a recipient of private major medical health insurance; or

(e) If the client becomes eligible for Child Welfare (CW) medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits.

(5) When a non-CAWEM child who is eligible for and receiving CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program benefits loses this eligibility with time remaining in the 12-month continuous eligibility period, the child's medical assistance continues for the remainder of the 12-month eligibility period through the CEM program.

(6) The CEM program eligibility period is based on the most recent CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program approval date. A child losing eligibility for CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program

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benefits less than 12 months after having been approved for benefits qualifies for CEM program benefits for the balance of the 12 month period following that approval.

(7) To be eligible for the CEM program, a client must meet the requirements of all of the following subsections:

(a) Be a U.S. citizen or meet the requirements in OAR 461-120-0125(4);

(b) Be eligible for and receiving CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM, or SAC program medical benefits;

(c) Be under 19 years of age; and

(d) Lose eligibility for CW medical, EXT, MAA, MAF, OHP (except OHP-CHP), OSIPM or SAC program medical benefits less than 12 months after having been approved for benefits, including approvals resulting from redeterminations.

(8) CEM program eligibility ends when the client --

(a) Becomes 19 years of age;

(b) Moves out of state;

(c) Voluntarily ends benefits; or

(d) Becomes eligible for CW medical, EXT, MAA, MAF, OHP, OSIPM, or SAC program benefits.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 414.025

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 414.025

Hist.: 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

461-135-1175

Senior Farm Direct Nutrition Program

(1) The Senior Farm Direct Nutrition Program (SFDNP) provides farm direct checks to low income individuals.

(2) An individual is eligible for SFDNP if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:

(a) Has countable income (see OAR 461-001-0000) less than 135 percent of the Federal Poverty Level as listed in OAR 461-155-0295.

(b) Receives Medicaid or SNAP benefits.

(c) Is homeless or resides in their own home or rental property.

(d) Is age 60 or older.

(3) SFDNP is funded by a grant from the United States Department of Agriculture (USDA). The Department determines the allotment amount and number of eligible individuals on an annual basis, based on the grant allocation received from the USDA.

(4) The Department may not issue more than one SFDNP allotment per participant, per year.

(5) SFDNP begins June 1 each year and ends on October 31 each year. In order to qualify for the program, the Department must receive the applicant's letter of interest by September 15 of the year in question.

(6) The Department processes applicants' letters of interest in the order in which the letters are received at the Department's central office.

(7) When the grant allocation received from the USDA is expended in its entirety, the Department closes SFDNP for the year in question.

(8) The Department determines the treatment of SFDNP benefits during the eligibility process for other programs in accordance with OAR 461-145-0190.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070

Stats. Implemented: ORS 409.050, 410.070, 411.060, 411.070

Hist.: SSP 8-2006, f. & cert. ef. 6-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; 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 11-2009(Temp), f. & cert. ef. 6-1-09 thru 11-27-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 8-2010(Temp), f. & cert. ef. 4-1-10 thru 9-28-10; SSP 18-2010, f. & cert. ef. 7-1-10

461-145-0040

Burial Arrangements and Burial Fund

(1) The following definitions apply to this rule:

(a) A burial arrangement is an agreement with an entity — such as a funeral agreement (which means an arrangement made with a licensed funeral provider), burial insurance, or a burial trust designating a funeral director as the beneficiary — that makes allowance for burial costs. A burial arrangement does not include a burial space, which is covered in OAR 461-145-0050, or a burial fund.

(b) A burial fund is an identifiable fund set aside for a client's burial costs. A burial fund does not include a burial space, which is covered in OAR 461-145-0050, or a burial arrangement.

(2) Except as provided in subsection (e) of this section, a burial arrangement is treated as follows:

(a) In the ERDC, MAA, MAF, OHP, REF, REFM, SAC, SNAP, and TANF programs, the equity value (defined in OAR 461-001-0000) of one

prepaid burial arrangement for each member of the filing group is excluded.

(b) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), up to \$1,000 in combined equity value of each burial arrangement with a licensed funeral director (plus accrued interest) and life insurance policies are excluded. The amount of combined cash and equity value of all life insurance and burial arrangements that is over \$1,000 is counted as a resource.

(c) In the GA, GAM, OSIP, OSIPM, and QMB programs, the amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs is excluded.

(d) In all programs not listed in subsection (a) of this section and for OSIP and OSIPM clients not covered by subsection (b) of this section, a burial arrangement is treated in the manner as the program treats a burial fund under section (3) of this rule.

(e) Burial insurance that has cash surrender value is considered life insurance and is treated in accordance with OAR 461-145-0320 and, as applicable, subsection (b) of this section.

(3) A burial fund is treated as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) A burial fund may be established only from financial means such as cash, burial contracts, bank accounts, stocks, bonds or life insurance policies.

(B) A burial fund is counted as a resource if it is commingled with assets unrelated to a burial. The amount set aside for burial must be in a separate account to be excluded from resource consideration.

(C) A burial fund may be established if the countable resources of a client exceed allowable limits. A burial fund is excluded from the resource calculation to the extent allowed in paragraph (D) of this subsection.

(D) The following calculation determines the exclusion for a burial fund:

(i) Up to \$1,500 of a burial fund may be excluded from resources for each of the following:

(I) The client.

(II) The client's spouse.

(ii) The amount in subparagraph (i) of this paragraph is reduced by the total of the following amounts:

(I) The face value of life insurance policies owned by the client that have already been excluded from resources.

(II) The amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs.

(E) All interest earned on an excluded burial fund or increases in the value of an excluded burial arrangement if left in the fund is excluded from income.

(b) In all programs not listed in subsection (a) of this section, a burial fund is counted as a resource.

(4) There is no overpayment for the time period during which the burial arrangement or burial fund existed if a client:

(a) Cancels an excluded burial arrangement; or

(b) Uses an excluded burial fund for any purpose other than burial costs.

(5) If an asset originally used as a burial arrangement or burial fund is converted to other uses, the asset is treated under the other applicable rules.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91;

AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-

1992, f. & cert. ef. 10-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 21-1995, f. 9-20-95, cert.

ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS

10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru

3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-

2007, f. 6-29-07, cert. ef. 7-1-07; SSP 18-2010, f. & cert. ef. 7-1-10

461-145-0143

Economic Recovery Payment

(1) The \$250 economic recovery payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded income in the month of receipt and an excluded resource in the month of receipt and for the following nine months.

(2) In the GA, GAM, HKC, MAA, MAF, OHP, OSIPM, and QMB programs, a client qualifies for a \$33 earned income exclusion per month.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049,

414.025, 414.826, 414.831

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816,

412.049, 414.025, 414.826, 414.831

Hist.: SSP 3-2009(Temp), f. & cert. ef. 3-3-09 thru 8-30-09; SSP 24-2009, f. & cert. ef. 8-31-

09; SSP 25-2009(Temp), f. & cert. ef. 9-1-09 thru 2-28-10; 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

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461-145-0320

Life Insurance

(1) Benefits paid on a life insurance policy are counted as unearned income in the month received and a resource if retained into the following month. The Department counts benefits as received when the insured individual dies or when the insured individual is eligible for and receives accelerated payments before death, such as when the insured individual has a terminal illness. When the payment is a lump sum due to the death of the insured individual a deduction is allowed, not to exceed \$1,500, for the cost of the deceased individual's last illness and burial if these costs were not otherwise insured.

(2) Burial insurance that has cash surrender value is treated in the same manner that this rule treats life insurance.

(3) The value of a life insurance policy is treated as follows:

(a) All term insurance that has no cash surrender value is excluded.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, the cash surrender value of the life insurance policy is excluded.

(c) In the GA, GAM, OSIPM, and QMB programs:

(A) For the purposes of this subsection, the following definitions apply:

(i) "Cash surrender value" means the equity that the policy acquires over time.

(ii) "Dividend" means a payment of surplus company earnings from the insurer.

(iii) "Dividend accumulation" means a dividend left with the insurer to accumulate interest that may be withdrawn without affecting the policy's face value or cash surrender value.

(iv) "Dividend addition" means the amount of insurance purchased with a dividend that increases the policy's death benefit and cash surrender value.

(v) "Face value" means the amount of the death benefit contracted for at the time the policy was purchased and does not include a dividend addition added after purchase of the policy.

(vi) "Viatical settlement" means an agreement allowing a third party to acquire a life insurance policy from a terminally ill individual at an agreed upon percentage of the life insurance policy's face value.

(B) The cash surrender value of life insurance policies owned by the financial group (see 461-110-0530) is excluded if the total face value of all policies for the insured individual is less than or equal to \$1,500. If the total face value of all policies for the insured individual is more than \$1,500, the entire cash surrender value is counted as a resource to the owner of the policy. The total face value does not include any dividend addition. A dividend accumulation must count as a resource even if the face value of the policy that generated the dividend accumulation is excluded.

(C) The cash surrender value of a policy acquired through a viatical settlement is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 18-2010, f. & cert. ef. 7-1-10

461-145-0820

Deemed Assets; Noncitizen's Sponsor

(1) An individual or organization may sponsor the admission of a noncitizen under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154).

(2) An affidavit of support (USCIS Form I-864) is the agreement between the sponsor and the United States Citizenship and Immigration Services in which the sponsor agrees to provide financial support for the noncitizen so that the noncitizen will not become a public charge.

(3) In all programs except the ERDC, REF, and REFM programs, the countable assets of an individual sponsor and the spouse of the sponsor are considered countable assets of the noncitizen as provided in this section and OAR 461-145-0810 to 461-145-0870. The sponsor's assets are considered available to the noncitizen whether or not the sponsor lives in the same household as the noncitizen. The assets of the sponsor's spouse are considered available only when the spouse lives in the sponsor's household.

(4) OAR 461-145-0830 sets out situations in which the assets of the sponsor and the spouse of the sponsor are not counted, as well as how the income deemed available to the noncitizen is calculated.

(5) The value of the resources deemed available to each noncitizen is determined as follows:

(a) In all programs except the OSIPM and SNAP programs, the total value of the countable resources is deemed to each sponsored noncitizen according to the rules of the program for which the noncitizen applies.

(b) In the OSIPM program, an amount equal to the OSIPM (not OSIPM-EPD) program resource standard is deducted from the total amount of resources deemed to the noncitizen (see OAR 461-160-0015). If the sponsor lives with a spouse, the two-person standard is deducted.

(c) In the SNAP program only, \$1,500 is deducted from the value. The remaining value is divided by the number of noncitizens sponsored by the individual or couple. The result is the value of the resources deemed available to the noncitizen.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025

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 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 8-2003(Temp), f. & cert. ef. 4-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 18-2010, f. & cert. ef. 7-1-10

461-145-0830

When to Deem the Assets of a Sponsor of a Noncitizen

(1) In the ERDC, REF, and REFM programs, the assets of a sponsor and of a sponsor's spouse are not deemed to the sponsored noncitizen.

(2) In all programs except the ERDC, REF, and REFM programs, the assets of a sponsor and the spouse of the sponsor are considered the assets of the sponsored noncitizen unless at least one of the following subsections applies:

(a) The sponsor has not signed a legally binding affidavit of support, for instance USCIS Form I-864 or I-864A;

(b) The sponsor receives SNAP, SSI, or TANF benefits;

(c) The sponsor is deceased. The estate of a deceased sponsor is not responsible for the noncitizen;

(d) The sponsored noncitizen establishes indigence. A sponsored noncitizen establishes indigence if the total income of the household including in-kind income plus any cash, food, housing, or other assistance provided by other individuals including the sponsor is:

(A) In the MAA, OHP, and TANF programs, under the countable (see OAR 461-001-0000) income standard.

(B) In the SNAP program, under 130 percent of the federal poverty level.

(C) In all programs except the MAA, OHP, SNAP, and TANF programs, not enough for the noncitizen to obtain food and shelter without program benefits.

(i) If the noncitizen is living with the sponsor, the indigence exception may not apply and deeming does apply.

(ii) If the noncitizen is living apart from the sponsor, the indigence exception applies if the noncitizen meets all of the following requirements:

(I) The total income (of all kinds and from all sources, even excluded income) the noncitizen receives is less than the OSIPM standard for a one-person need group;

(II) The noncitizen does not receive free room and board; and

(III) The resources (even excluded resources) available to the noncitizen are under the applicable resource limit.

(D) Each indigence determination under this subsection is effective for 12 months and may be renewed for additional 12-month periods.

(e) The sponsored noncitizen is a battered immigrant spouse, battered immigrant child, immigrant parent of a battered child or an immigrant child of a battered parent, as long as the battered noncitizen does not live in the same household as the person responsible for the battery;

(f) The sponsored noncitizen does not meet the alien status requirement for the program for which he or she applies;

(g) The sponsored noncitizen becomes a naturalized citizen;

(h) The sponsored noncitizen can be credited with 40 qualifying quarters of work; or

(i) The sponsored noncitizen is under 18 years of age.

(3) In the OSIPM program, the deeming period is three years after the date of admission, which is the date the U.S. Bureau of Citizenship and Immigration Services establishes as the date the noncitizen was admitted for permanent residence. Deeming ends on the last day of the month that is three years after the date of admission.

(4) In all programs except the ERDC, OSIPM, REF, REFM, and SNAP programs, the following process is used to determine the amount of income considered available to the noncitizen from the noncitizen's spon-

ADMINISTRATIVE RULES

sor and the spouse of the sponsor. The unearned income of the sponsor and the sponsor's spouse is added to their countable earned income (see OAR 461-140-0010) minus earned income deductions.

(5) In the OSIPM program:

(a) The income of the sponsor or the sponsor's spouse is not counted if any one of the following provisions applies:

(A) The individual is a refugee admitted to the United States under section 207 of the Immigration and Nationality Act (INA) (8 USC 1157);

(B) The individual has been granted asylum under section 208 of the INA (8 USC 1158); or

(C) The individual has become blind or disabled after admission to the United States.

(b) An amount equal to the OSIPM (not OSIPM-EPD) program income standard is deducted from the total amount of income deemed to the noncitizen (see OAR 461-160-0015). If the sponsor lives with a spouse, the two-person standard is deducted.

(6) In the SNAP program, each sponsored noncitizen is considered to have the income calculated according to section (4) of this rule divided by the number of the sponsor's --

(a) Current sponsored noncitizens;

(b) Household members who receive support from the sponsor; and

(c) Dependents.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 412.049, 414.042; SSP 18-2010, f. & cert. ef. 7-1-10

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1993(Temp), f. & cert. ef. 2-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 8-2003(Temp), f. & cert. ef. 4-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 18-2010, f. & cert. ef. 7-1-10

461-155-0270

Room and Board Standard; OSIPM

For an OSIPM program client in a waived community based care (see OAR 461-001-0000) facility, the room and board standard is \$523.70. A client residing in a community based care facility must pay room and board.

Stat. Auth.: ORS 411.060, 411.070, 2009 OL Ch. 849

Stats. Implemented: ORS 411.060, 411.070, 2009 OL Ch. 849

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 8-1992, f. & cert. ef. 4-1-92; 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 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; 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 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 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 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

461-155-0500

Special Needs; Overview

(1) Ongoing special needs are needs that last several months at a consistent cost. Examples are special diets and accommodation allowances. OAR 461-155-0010 is used to determine how special needs are considered for each program.

(2) To be eligible for a special need item, a client may not have any other available resources in the community or natural support system to meet the need, excluding resources used in determining eligibility.

(3) To be eligible for a special need item, a client may not be eligible for the item through Medicare, Medicaid, or any other medical coverage.

(4) A client may be eligible for an ongoing special need item if providing the ongoing special need item is authorized in lieu of additional provider service hours pursuant to OAR 411-030-0002 to 411-030-0090 and is more cost-effective.

(5) The Department may authorize payment for one-time and ongoing special needs for the following, in accordance with OAR 461-155-0510 to 461-155-0710:

(a) One-time needs for the following:

(A) Community based facility room and board (see OAR 461-155-0630).

(B) Community transition services (see OAR 461-155-0526).

(C) Diversion and transition services (see OAR 461-155-0710).

(D) Home adaptations to accommodate a client's physical condition (see OAR 461-155-0551).

(E) Home repairs (see OAR 461-155-0600).

(F) Moving costs (see OAR 461-155-0610).

(G) Property taxes (see OAR 461-155-0620).

(b) Ongoing needs for the following:

(A) Accommodation allowances (see OAR 461-155-0660).

(B) Food for guide dogs and special assistance animals (see OAR 461-155-0530).

(C) Laundry allowances (see OAR 461-155-0580).

(D) Personal incidentals and room and board allowance (see OAR 461-155-0700).

(E) Restaurant meals (see OAR 461-155-0640).

(F) Special diet allowances (see OAR 461-155-0670).

(G) Telephone allowances (see OAR 461-155-0680).

(H) Prescription drug co-pay coverage (see OAR 461-155-0688).

(I) Transportation services payment (see OAR 461-155-0693).

Stat. Auth.: ORS 411.060 & 411.070

Stat. Implemented: ORS 411.060 & 411.070

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 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 18-2008(Temp), f. & cert. ef. 8-1-08 thru 1-28-09; SSP 21-2008(Temp), f. & cert. ef. 10-1-08 thru 1-28-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 18-2010, f. & cert. ef. 7-1-10

461-155-0693

Special Need; Transportation Services Payment; OSIPM

In the OSIPM program:

(1) The following individuals may be eligible for a transportation services payment:

(a) A client who receives SSI as his or her only income; or

(b) A client who the Department determines meets the requirements of OAR 461-125-0370(1)(c) and has adjusted income less than the SSI standard.

(2) These services are for transportation to non-medical and non-waivered activities and resources approved by the Department. Examples of such transportation services include, but are not limited to: transportation provided by common carriers, taxicab, or bus; and assistance with purchase of a pass for public transportation.

(3) Transportation services do not include purchase of a vehicle, vehicle maintenance or repair, reimbursement for travel expenses, or transportation services that may be obtained through other means, such as the State Medicaid Plan, waiver, or other public or private resources available to the individual, including natural supports.

(4) Payment for services authorized by this rule may not exceed \$25 per month.

(5) Service costs must be verified annually or when questionable.

Stat. Auth.: ORS 411.060, 411.083, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.083, 411.704, 411.706

Hist.: SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 18-2010, f. & cert. ef. 7-1-10

461-160-0015

Resource Limits

(1) In the EA program, all countable (see OAR 461-001-0000) resources must be used to meet the emergent need.

(2) In the ERDC, EXT, HKC, and REFM programs, and for an individual whose eligibility is determined under the OHP-CHP, OHP-OPC, OHP-OP6, or OHP-OPP programs there is no resource limit.

(3) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) \$2,000 for a one-person need group (see OAR 461-110-0630) and \$3,000 for a two-person need group.

(b) \$1,000 for an OSIP need group eligible under OAR 461 135 0771. The total cash resources may not exceed \$500 for a one-person need group or \$1,000 for a two-person need group.

(c) \$5,000 is the limit for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).

(4) In the MAA, MAF, REF, SAC, and TANF programs, the resource limit is:

(a) \$10,000 for a need group with at least one JOBS participant who is progressing in a case plan.

(b) \$10,000 for a need group with at least one member who is working under a JOBS Plus agreement.

(c) \$2,500 for all other need groups, including all TANF applicants.

(5) In the OHP program, the resource limit for an individual whose eligibility is determined under the OHP-OPU program is \$2,000.

(6) In the QMB program, the resource limit is amended in January of each year based on the low income subsidy for Medicare Part D as published by the Health Resources and Services Administration of the U.S. Department of Health and Human Services. Effective January 1, 2010 the

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resource limit is \$6,600 for a one-person need group and \$9,910 for a need group containing two or more individuals.

(7) In the SNAP program, the resource limit is:

(a) \$3,000 for a financial group (see OAR 461-110-0530) with at least one member who is elderly (see OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015).

(b) \$2,000 for all other financial groups.

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, 414.831, 414.839

Stats. Implemented: ORS 409.050, 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 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-1; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10

461-160-0620

Income Deductions and Client Liability; Long-Term Care Services or Waivered Services; 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 Title XIX waived services 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) The OSIPM maintenance standard for a client who receives waived services.

(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. \$1,822 is added to the amount over \$547 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$2,739 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 \$1,822. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$1,822.

(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 waived services (except a client identified in OAR 461-160-0610(4)), the liability is the actual cost of the waived service 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 waived services. 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 non-waivered 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 waived services 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

Stats. Implemented: ORS 411.060 & 411.070

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 18-2010, f. & cert. ef. 7-1-10

461-165-0030

Concurrent and Duplicate Program Benefits

(1) An individual may not receive benefits from the Department of the same type (that is, cash, medical, or SNAP benefits) for the same period as a member of two or more different benefit groups (see OAR 461-110-0750) or from two or more separate programs, except as noted in this rule. This provision includes a prohibition against an individual receiving TANF concurrently with another cash assistance program funded under Title IV-E of the Social Security Act.

(a) A client may receive EA, HSP, and TA-DVS benefits and cash payments from other programs for the same time period.

(b) If a GA client becomes eligible for the TANF program, the client's benefits are supplemented during the first month of eligibility for TANF to the TANF payment standards.

(c) An REF or TANF recipient may receive ERDC for a child (see OAR 461-001-0000) in the household group (see OAR 461-110-0210), but who may not be included in the REF or TANF filing group.

(d) A child who is a member of an ERDC benefit group may also be a member of one of the following benefit groups:

(A) An OSIP-AB benefit group.

(B) A TANF benefit group when living with a nonneedy caretaker relative (see OAR 461-001-0000), if the caretaker relative is not the child's parent.

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(C) A TANF benefit group when living with a needy caretaker relative receiving SSI.

(e) A client in the SNAP program who leaves a filing group (see OAR 461-110-0370) that includes an individual who abused them and enters a domestic violence shelter (see OAR 461-001-0000) or safe home (see OAR 461-001-0000) for victims of domestic violence (see OAR 461-001-0000) may receive SNAP benefits twice during the month the client enters the domestic violence shelter or safe home.

(f) A QMB client may also receive medical benefits from EXT, MAA, MAF, OSIPM, REFM, or SAC.

(2) An individual may not receive benefits of the same type (that is, cash, medical, or SNAP benefits) for the same period from both Oregon and another state or tribal food distribution program, except as follows:

(a) Medical benefits may be authorized for an eligible client if the client's provider refuses to submit a bill to the Medicaid agency of another state and the client would not otherwise receive medical care.

(b) Cash benefits may not be authorized for a client in the Pre-TANF program if benefits from another state will end by the last day of the month in which the client applied for TANF.

(3) In the SNAP program, each individual who has been included as a member of the filing group in Oregon or another state is subject to all of the restrictions in section (2) of this rule.

(4) An individual may not receive benefits from the CEC, CEM, EXT, MAA, MAF, OHP, OSIPM, REFM, or SAC programs while receiving a subsidy through the Family Health Insurance Assistance Program (FHIAP) established by ORS 735.720 to 735.740 or while receiving a subsidy through the Office of Private Health Partnerships (OPHP) in accordance with ORS 414.826, 414.831, and 414.839.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.049, 412.124, 414.025, 414.826, 414.831, 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049, 412.124, 414.025, 414.826, 414.831, 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 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 18-2010, f. & cert. ef. 7-1-10

461-165-0100

Issuance Date of Benefit

(1) For all programs except the EA and SNAP programs:

(a) An authorized cash payment check is dated on the first day of the payment period or as soon as practicable thereafter.

(b) Checks and medical cards are mailed so they can be delivered to the client on the first day of each month except in the following cases:

(A) Initial month benefits for cases that are new, reopened, or restored.

(B) Cases in the monthly reporting system.

(C) If the first day of the month falls on Sunday or a holiday, the check is mailed in time for the client to receive it on Saturday or the mail day preceding the holiday.

(D) Checks redirected to the branch office may be released during the last workday preceding a weekend or holiday.

(c) Benefits issued by EBT will be available on the first day of each month, except for the following:

(A) Initial month benefits for cases that are new, reopened, or restored.

(B) Cases in the monthly reporting system.

(C) Benefits held by the branch office.

(2) EA clients must receive their checks, either direct or vendor, in time to meet their emergent needs.

(3) SNAP benefits are available as follows:

(a) SNAP benefits issued by EBT are available in the EBT account on the day of the month corresponding to the last digit of the client's case number except for the following:

(A) The benefits for the initial month of eligibility for a new or reopened case.

(B) The benefits for the seventh month of the certification period for a case in the semi-annual reporting system.

(b) SNAP benefits issued through the SNAP cash-out are available as follows:

(A) Benefits accessed through an EBT account are available on the first day of the month.

(B) Checks are mailed on the first day of the month.

(C) Direct-deposit funds are available on the third working day of the month.

(4) For SNAP changes that could not be made in time to adjust the monthly allotment, a supplement is issued within 10 days of the date the change was reported.

(5) In the OSIPM program, a medical ID card is mailed on the first of each month to clients receiving Title XIX waived services who contribute to their services by paying their excess income into a maintenance trust and agency account. The client's medical card is not held until the payment is received. If payment is not received before the end of the payment month, the Department considers the QMB program for the following month.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 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

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; 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 13-1997, f. 8-28-97, cert. ef. 9-1-97; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 18-2010, f. & cert. ef. 7-1-10

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:

(a) The provider previously was denied and subsequently was not determined to be eligible; or

(b) 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 OAR 407-007-0210(21)(a)(G)) 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 OAR 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. If the documents and information show that the provider meets the eligibility requirements, the Department may approve the provider for payment back to the first of the month the eligibility requirement is met provided there is no other basis for ineligibility.

(c) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.

(3) The provider must submit a completed Department Listing Form (DHS 7494) to the Department. The provider and each individual identified under section (4) of this rule is considered a subject individual and must complete and sign the authorization for a records check and, if necessary, an authorization to release information and fingerprint cards. The provider must fully disclose all requested information as part of the records check.

(4) The provider must meet the requirements of either subsection (a) or (b) of this section:

(a) Currently be certified or registered with the Child Care Division (CCD) of the Employment Department 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.

(b) Submit the name of each subject individual together with the authorization from the subject individual for a records check through the Criminal History (CH) record system maintained by the Oregon State Police and the Child Protective Service (CPS) record system maintained by the Department, as follows:

(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--

(i) Each individual 16 years of age or older who lives in the provider's home; and

(ii) Each individual who frequently visits the home of the provider during the hours care is provided and may have unsupervised access to a child in care.

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(5) Each subject individual 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. The Department may withhold authorization for payment to a provider until the records check is complete.

(b) Provide, in a manner specified by the Department, information required to conduct CH 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.

(6) 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 or 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 the records for a minimum of 12 months and provide the records to the Department upon request.

(f) Be the individual or facility listed as providing the child care. The provider must notify the Department before using someone else to supervise a child on a temporary basis.

(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 within 10 days of occurrence:

(A) Any arrest or involvement with CPS or any other agency providing child protective services of the child care provider, household member, or facility member.

(B) Any change to his or her name or address including where care is provided, and the addition of any individual or employee to the household or facility.

(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.

(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 facility where care is provided meets all of the following standards, unless the care is provided in the home of the child, except that a provider who provides care in the home of the child must meet only the requirements of paragraph (A) of this subsection:

(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.

(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.

(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. This requirement does not apply to a provider registered or licensed by CCD.

(q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(7) A child care provider not subject to certification or registration with the Oregon Employment Department, Child Care Division (CCD) 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, or resumes providing after a break of more than one year, child care services after June 30, 2010.

Stat. Auth.: ORS 181.537, 409.050, 409.610, 411.060, 411.070, 411.122, 657A.340, 657A.450

Stats. Implemented: ORS 181.537, 409.050, 409.610, 411.060, 411.070, 411.122, 657A.340, 657A.450

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

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 BCCM program, a client must report either of the following changes within 10 days of occurrence:

(A) A change in health care coverage.

(B) A change in residence.

(b) 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)(b)(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.

(c) In the EXT program, a client must report any of the following changes within 10 days of occurrence:

(A) A change in health care coverage.

(B) A change in name.

(C) A change in pregnancy status of any member of the filing group (see OAR 461-110-0330).

(D) A change in residence.

(E) A member in filing group is no longer a dependent child (see OAR 461-001-0000).

(d) In the SNAP program:

ADMINISTRATIVE RULES

(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 monthly income exceeding 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.

(e) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) A client must report all changes that may affect eligibility within 10 days of occurrence, including any of the following changes:

- (i) A change in employment status.
- (ii) A change in health care coverage.
- (iii) A change in membership of the household group (see OAR 461-110-0210).
- (iv) A change in marital status.
- (v) A change in residence.
- (vi) A change in resources.
- (vii) A change in source or amount of income.

(B) A client assigned to MRS also must report changes in income in accordance with the rules related to MRS (see OAR 461-170-0010, 461-170-0100, 461-170-0110).

(f) In the MAA, MAF, REF, SAC, 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 mailing address or residence.

(F) A change in pregnancy status of any member of the filing group.

(G) A change in source of income.

(H) A change in unearned income more than \$50.

(I) A change in who pays the shelter costs if the costs will be paid by a non-custodial parent.

(J) Sale or receipt of a resource that causes total resources to exceed program resource limits.

(g) In the HKC and OHP programs, a client must report any of the following changes within 10 days of occurrence:

(A) A change in availability of employer-sponsored health insurance.

(B) A change in health care coverage.

(C) A change in mailing address or residence.

(D) A change in name.

(E) A change in pregnancy status of any member of the filing group (see OAR 461-110-0400).

(h) 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, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826, 414.831

Stats. Implemented: ORS 411.060, 411.070, 411.105, 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

461-175-0200

Notice Situations; General Information

(1) In the EA program, a basic decision notice (see OAR 461-001-0000) is sent for all situations.

(2) In the SNAP program:

(a) A continuing benefit decision notice (see OAR 461-001-0000) is sent to cases that are recertified early to align the SNAP certification end date with the end date of TANF or medical benefits.

(b) A basic decision notice is sent for all other actions on applications for assistance.

(3) In the JOBS program:

(a) A basic decision notice is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) In the TANF program, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(5) In the Pre-TANF program, a basic decision notice is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(6) In the TA-DVS program, a basic decision notice (see OAR 461-001-0000) is sent to a safe mailing address or hand delivered for all situations. This includes when the program is approved, denied, or closed (prior to the end of the 90 day eligibility period) and when a payment under the program is denied.

(7) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(8) In all programs:

(a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a decision notice with another decision notice or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a decision notice or contested case notice.

(b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the financial group (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No decision notice is required in each of the following situations:

(A) Benefits are ended because there is no living person in the benefit group (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement that qualifies as a final order under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).

(D) A decision notice that included the eligibility begin and end dates was given for TA-DVS program benefits and the 90 day eligibility period ends.

(d) When the Department amends a decision notice with another decision notice under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.

ADMINISTRATIVE RULES

(e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.

(f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

Stat. Auth.: ORS 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

Stats. Implemented: ORS 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 11-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 3-2010(Temp), f. & cert. ef. 2-23-10 thru 8-22-10; SSP 18-2010, f. & cert. ef. 7-1-10

461-175-0300

Notice Situation; Prior Notice

(1) Except as provided in section (5) of this rule, when benefits in any Department program except a medical program and the SNAP program will end or be reduced after a specific period of time, the Department may issue a decision notice (see OAR 461-001-0000) informing the benefit group (see OAR 461-110-0750) of the date benefits will end or be reduced, and no further decision notice is required.

(2) Except as provided in section (5) of this rule, in any Department program except a medical program and the SNAP program, if the benefit group was informed in writing when the benefits began that the benefit group would receive benefits only for a specific period of time a basic decision notice (see OAR 461-001-0000) may be used to--

(a) Deny an application to start or continue benefits after the completion of a certification period (see OAR 461-001-0000) or to approve benefits at a level lower than the prior certification period.

(b) Indicate that benefits have been ended or reduced when no timely application is submitted.

(3) A basic decision notice is used when a special need allowance granted for a specific period of time is removed at the end of the specified period and the benefit group was informed of this in writing when the allowance began. A timely continuing benefit decision notice (see OAR 461-001-0000) is required if stopping the special need allowance results in benefit closure.

(4) In the JOBS Plus program, a basic decision notice is used if:

(a) An employer submits a wage reimbursement billing and the Department calculates a supplement (see OAR 461-190-0416 about supplements);

(b) The benefit group received a timely continuing benefit decision notice that the method of payment would be changed from cash to employer-paid wages; and

(c) The notice specified the period of time that benefits would be diverted.

(5) No additional decision notice is required when:

(a) Notwithstanding OAR 461-115-0010(6), when a benefit group submits an application for a program from which they currently are receiving benefits.

(b) In the OSIPM program--

(A) A client's liability returns to the previous higher level after the Department sent the client a continuing benefit decision notice for a decrease in the client liability due to an allowable deduction and that notice also specified when the deduction no longer would apply causing the client liability to return to the previous higher level; or

(B) A client's benefits are being closed or reduced and the Department sent the client a basic decision notice of eligibility and a simultaneous continuing benefit decision notice because the client's circumstances changed between the date of the client's application and the date of the Department's eligibility decision and the change caused the client's benefits to be reduced or closed.

(6) In the SNAP program:

(a) A basic decision notice is used to close benefits if the benefit group was informed in writing, when their benefits began, that they would receive benefits only for a specific period of time.

(b) No decision notice is required if the client is provided a decision notice at the time of application or redetermination that--

(A) The allotment of the benefit group would vary from month to month and listed the anticipated changes;

(B) In the case the client applied at the same time for both cash assistance and SNAP benefits, the SNAP benefits would be reduced or closed upon approval of the cash assistance; or

(C) In the case of a benefit group receiving benefits under expedited services with postponed verification:

(i) The expedited services benefits would close if the Department did not receive the postponed verification within the timeframe established under OAR 461-115-0690.

(ii) The expedited services benefits may be adjusted beyond the timeframe established under OAR 461-115-0690 based on the verified information provided to the Department without further notice.

Stat. Auth.: ORS 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 414.231, 414.826

Stats. Implemented: ORS 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 414.231, 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 25-1994, f. & cert. ef. 11-1-94; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 3-2005(Temp), f. & cert. ef. 3-2-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 18-2010, f. & cert. ef. 7-1-10

461-180-0050

Effective Dates; Suspending or Closing Benefits and JOBS Support Service Payments

(1) This rule explains the effective date for closing or suspending benefits for the entire benefit group (see OAR 461-110-0750) and the effective date for ending JOBS support service payments.

(2) In all programs except the ERDC program, when the only individual in a benefit group dies, the effective date of the closure is:

(a) In the REF, SNAP, and TANF programs, the last day of the month in which the death occurred.

(b) In all other programs, the date of the death.

(3) For all closures and suspensions not covered by section (2) of this rule, the effective date is determined as follows:

(a) When prospective eligibility is used, the effective date for closing or suspending benefits is the last day of the month in which the notice period ends.

(b) When retrospective eligibility or budgeting is used, the effective date for closing or suspending benefits is the last day of the budget month.

(c) When an absent parent enters an ongoing TANF program household, or another change occurs that ends eligibility based on the incapacity or unemployment of a parent, the effective date for closing benefits is the last day of the month in which the 30-day period described in OAR 461-125-0255 ends.

(d) For a pregnant female receiving benefits of the EXT, MAA, MAF, OSIPM, or SAC program, the effective date for closing benefits is no earlier than the last day of the calendar month in which the 60th day after the last day of pregnancy falls, except at the client's request.

(e) In the OHP program, the effective date for closing benefits is:

(A) The last day of the month in which the benefit group becomes ineligible;

(B) The date the program ends; or

(C) For cases not covered by paragraph (A) or (B) of this subsection, the last day of the certification period.

(f) The effective date for ending support service payments authorized under OAR 461-190-0211 is the earlier of the following:

(A) The date the related JOBS activity is scheduled to end.

(B) The date the client no longer meets the requirements of OAR 461-190-0211.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 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 36-1996, f. 10-31-96, cert. ef. 11-1-96; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 18-2004, f. & cert. ef. 7-12-04; SSP 23-2004(Temp), f. & cert. ef. 10-1-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 18-2010, f. & cert. ef. 7-1-10

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 CEC and CEM programs, it is the first of the month following the month that eligibility for Child Welfare medical, EXT, MAA, MAF, OHP, OHP-CHP, OSIPM, or SAC program benefits ends.

ADMINISTRATIVE RULES

(2) In the EXT program, it is the first of the month following the month that MAA or MAF program eligibility ends.

(3) In the GAM, MAA, MAF, OHP, OSIPM, QMB-DW, REFM, and SAC programs:

(a) Except as provided for in sub-section (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 OAR 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.

(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.

(4) In the HKC program, the Office of Private Health Partnerships (OPHP) determines the effective date for enrolling an eligible child in one of the HKC program categories of coverage.

(5) 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.

(6) 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.

(7) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (3)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839

Stats. Implemented: ORS 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

461-180-0120

Effective Dates; Removing an Individual

The effective date for removing an individual from a benefit group (see OAR 461-110-0750) is one of the following:

(1) If the individual has left the benefit group in the current budget month because he or she is ineligible, is disqualified, or has left the household, the effective date is:

(a) For changes reported through the MRS:

(A) The first of the payment month, if the change will reduce benefits.

(B) The last day of the budget month, if the change will end benefits.

(b) For changes reported outside the MRS and for all disqualifications:

(A) The first of the month after the notice period ends, if the change will reduce benefits.

(B) The last day of the month in which the notice period ends, if the change will end benefits.

(2) If the individual is reasonably expected to leave the household next month, the effective date is the later of the following:

(a) The first of the month following the month in which the person leaves the household group, if the change will reduce benefits.

(b) The end of the month in which the person is expected to leave the household group, if the change will end benefits.

(3) In the OHP program, if the individual is receiving benefits from a program that is ending, the effective date is the day on which the program ends.

(4) When an individual in a benefit group of more than one individual dies, the effective date of the closure or reduction in benefits is one of the following:

(a) In the ERDC, REF, SNAP, and TANF programs, the last day of the month in which the 10-day notice period ends.

(b) For all programs not covered by subsection (a) of this section, the date of the individual's death.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 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 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 18-2010, f. & cert. ef. 7-1-10

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 19-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 11-24-10

Notice Publication Date:

Rules Amended: 461-115-0705

Subject: OAR 461-115-0705 about verification requirements for medical programs is being amended to extend changes made by temporary rule on May 28, 2010 because the underlying rule was amended by other permanent changes effective July 1, 2010. These amendments indicate the verification requirements for the Extended Medical Assistance (EXT). These amendments also state the verification requirements for social security numbers, alien status, and pregnancy in the Breast and Cervical Cancer Medical Program (BCCM), Extended Healthy KidsConnect (HKC), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), and Medical Coverage for Children in Substitute or Adoptive Care (SAC) programs. These amendments also state the income verification requirements for the HKC, MAA, MAF, OHP, and SAC programs. This rule is also being amended to specify the EXT, MAA, and MAF programs must verify the premium amount for cost-effective employer sponsored insurance.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-115-0705

Required Verification; BCCM, HKC, MAA, MAF, OHP, SAC

(1) This rule establishes verification requirements for the BCCM, EXT, HKC, MAA, MAF, OHP, and SAC programs in addition to the requirements of OAR 461-115-0610.

(2) Except as provided in section (3) of this rule, each client declaring U.S. citizenship must provide acceptable documentation of citizenship and identity. For purposes of this rule, *acceptable documentation* consists of any of the documents permitted under section 1903(x) of the Social Security Act (42 U.S.C. 1396b).

(a) A new applicant must provide *acceptable* documentation as a condition of eligibility (see OAR 461-001-0000). Except for an applicant whose medical benefits previously were closed after March 31, 2009 for not providing acceptable documentation, an applicant's medical assistance may not be delayed for citizenship documentation while the eligibility decision is pending if all other medical assistance eligibility requirements have been met.

(b) A current recipient who has not already provided acceptable documentation must provide acceptable documentation as a condition of eligibility when requested by the Department.

(c) A client who already has provided acceptable documentation is not required to provide additional evidence during a subsequent application for benefits or redetermination of eligibility.

(3) Each of the following clients is exempt from the requirements of section (2) of this rule, a client who is:

(a) Assumed eligible under OAR 461-135-0010(5);

(b) Eligible for or receiving Medicare;

(c) Presumptively eligible for the BCCM program;

(d) Receiving Social Security Disability Income (SSDI); or

(e) Receiving Title IV-E benefits.

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(4) At initial application and at any other time it affects the client, the following must be verified:

(a) The requirement in OAR 461-120-0210 to have or apply for a social security number.

(b) Alien status for an applicant who indicates he or she is not a U.S. citizen, and for a client who meets the alien status requirement under OAR 461-120-0125(4)(b) the client's alien status must be verified at each certification.

(5) When the pregnancy of a client is first reported, it must be verified by a medical practitioner, health department, clinic, or crisis pregnancy center or similar facility.

(6) In the HKC, MAA, MAF, OHP, and SAC programs, at initial application, recertification, and at any other time it affects the client, income received through the date of request (see OAR 461-115-0030) must be verified. If income cannot be verified, the Department accepts the client's statement.

(7) In the OHP-OPU program:

(a) The Department must verify the premium exemption allowed because a client is:

(A) A member of a federally recognized Indian tribe, band, or group;

(B) An Eskimo, Aleut, or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act; or

(C) An individual eligible for benefits through an Indian Health Program.

(b) A client enrolled full time in higher education must provide verification, at application and recertification, that the client meets the requirements of OAR 461 135 1110.

(8) In the EXT, MAA, MAF, OHP-OPC, and OHP-OP6 programs, the amount of the premium for cost-effective employer-sponsored health insurance must be verified.

(9) A client must provide verification for any eligibility requirement in sections (4) to (8) of this rule questioned by the Department.

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 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; 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 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; Suspended by SSP 13-2006(Temp), f. & cert. ef. 9-25-06 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 8-2008, f. & cert. ef. 4-1-08; SSP 10-2009(Temp), f. & cert. ef. 5-6-09 thru 9-28-09; 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 17-2010(Temp), f. & cert. ef. 5-28-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 19-2010(Temp), f. & cert. ef. 7-1-10 thru 11-24-10

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 20-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Amended: 461-115-0530, 461-135-1110, 461-145-0143, 461-180-0090

Subject: OAR 461-115-0530 about OHP certification periods is being amended to include policy about the Healthy Kids Connect (HKC) certification period and to clarify that HKC subsidy amounts are not reduced or eliminated during an HKC certification period. A certification period is the period for which a client is certified eligible for a program.

OAR 461-135-1110 about when a student enrolled in higher education is eligible or ineligible for the Oregon Health Plan - Adults program (OHP-OPU, which provides coverage for adults who qualify under the 100 percent income standard) is being amended in response to a recent change in federal guidelines to revise the definition for the term "meets the requirements for a Pell grant."

OAR 461-145-0143 about economic recovery payments is being amended to remove its statements about the \$33 earned income exclusion because this topic is now covered in OAR 461-145-0140,

and there is potential confusion when the topic is covered in two rules.

OAR 461-180-0090 about effective dates for the initial month of medical benefits is being amended to state that except for children who qualify for OSIPM long term care services, the effective date of medical eligibility for clients transitioning from HKC to the MAA, MAF, OHP, OSIPM or SAC medical programs is the first of the month following the month an eligibility determination is made.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-115-0530

Certification Period; OHP

(1) For an OHP-OPU applicant not currently receiving BCCM, EXT, MAA, MAF, OHP, OSIPM, REFM, SAC, or child welfare medical program benefits, the initial OHP certification period (see OAR 461-001-0000) begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following six calendar months. All other OHP-OPU certification periods are for six months.

(2) For an HKC, OHP-CHP, OHP-OPC, or OHP-OP6 applicant not currently receiving BCCM, EXT, HKC, MAA, MAF, OHP, OSIPM, REFM, SAC, or child welfare medical program benefits, the initial certification period begins on the effective date for starting medical benefits (described in OAR 461-180-0090) and includes the following twelve calendar months. All other HKC, OHP-CHP, OHP-OPC, or OHP-OP6 certification periods are for twelve months.

(3) A client's HKC or OHP benefits end before the end of the certification period if the client no longer meets the program eligibility requirements or the program ends.

(4) To establish a new certification period, an HKC or OHP benefit group (see OAR 461-110-0750) must complete a redetermination of eligibility and be found eligible.

(5) When an individual wishes to be added to an OHP benefit group already certified for OHP, the entire group must establish a new certification period. If, as a result of the new redetermination process, the new filing group (see OAR 461-110-0400) is ineligible, the original benefit group remains eligible for the remainder of its certification period.

(6) When an HKC certification period is established, the HKC subsidy may not be reduced or eliminated during the certification period.

(7) When an individual wishes to be added to an HKC benefit group already certified for HKC, the entire benefit group must be redetermined.

(a) If as a result of the new redetermination process, the new filing group countable HKC income increases from less than 251% FPL and is equal to or greater than 251% FPL, the original HKC certification period and subsidy is not affected. The individual is added to the existing benefit group. The new benefit group remains eligible at the same subsidy level for the remainder of the original certification period.

(b) If as a result of the new HKC redetermination, the HKC filing group countable HKC income decreases to less than 251% FPL, a new certification period is established for the new benefit group.

(8) If a member leaves an HKC or OHP benefit group, that individual and other members of the benefit group remain eligible for the remainder of the certification period.

(9) If a current OHP client moves into another current OHP filing group, that client and the members of that filing group who are OHP-eligible are combined into one benefit group if the client is required to be in the current household's OHP filing group. The certification period for the new benefit group ends the later of the date the current client's certification period or the filing group's period was set to end.

(10) If a current HKC client moves into another current HKC filing group, that client and the members of that filing group who are HKC-eligible are combined into one benefit group if the client is required to be in the current household's HKC filing group. The certification period for the new benefit group ends the later of the date the current client's certification period or the filing group's period was set to end.

(11) A pregnant woman found eligible for the OHP OPP program is not assigned a certification period — she is eligible for the period described in OAR 461 135 0010.

Stat. Auth: ORS 409.050, 411.060, 411.404

Stats. Implemented: ORS 409.010, 411.060, 411.404, 414.065, 414.231

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; 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 9-2006(Temp), f. & cert. ef. 6-1-06 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 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 20-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

ADMINISTRATIVE RULES

461-135-1110

Eligible and Ineligible Students; OHP-OPU

(1) In the OHP-OPU program, an individual enrolled full time in higher education is *ineligible* to receive benefits, unless the requirements of one of the following subsections are met:

(a) The student:

(A) Meets the income requirements for a Pell grant;

(B) Is not currently covered by private major medical health insurance (see OAR 461-135-1100) or an HMO; and

(C) Has not been covered by private major medical health insurance or by an HMO for the six months immediately preceding the date of application.

(b) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974 (19 USC 2296).

(2) For the purposes of this rule:

(a) Higher education includes the following:

(A) Any public or private university, college or community college.

(B) Any post-secondary vocational or technical school that is eligible to accept Pell grants.

(b) Full time is defined by the school.

(c) Meets the income requirements for a Pell grant means:

(A) The student's Student Aid Report shows an "expected family contribution" less than \$4,618 for the 2009-2010 school year or less than \$5,274 for the 2010-2011 school year; or

(B) The student is eligible for a Pell grant and provides documentation of eligibility from the school's financial aid office.

(3) A student's enrollment status continues during school vacation and breaks. A student's higher education status ends when the student graduates, drops out (as verified by their disenrolling), reduces the student's credit or attendance hours below full-time status, is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

Stat. Auth.: ORS 411.060, 411.070, 411.081, 411.083, 411.085, 411.087, 411.402, 411.404, 414.025

Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.083, 411.085, 411.087, 411.402, 411.404, 414.025

Hist.: AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 14-2002(Temp), f. & cert. ef. 10-30-02 thru 4-28-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; 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 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 20-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

461-145-0143

Economic Recovery Payment

The \$250 economic recovery payment authorized by the American Recovery and Reinvestment Act of 2009 is excluded income in the month of receipt and an excluded resource in the month of receipt and for the following nine months.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.826, 414.831

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 414.025, 414.826, 414.831

Hist.: SSP 3-2009(Temp), f. & cert. ef. 3-3-09 thru 8-30-09; SSP 24-2009, f. & cert. ef. 8-31-09; SSP 25-2009(Temp), f. & cert. ef. 9-1-09 thru 2-28-10; 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 20-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

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 CEC and CEM programs, it is the first of the month following the month that eligibility for Child Welfare medical, EXT, MAA, MAF, OHP, OHP-CHP, OSIPM, or SAC program benefits ends.

(2) In the EXT program, it is the first of the month following the month that MAA or MAF program eligibility ends.

(3) In the GAM, MAA, MAF, OHP, OSIPM, QMB-DW, REFM, and SAC programs:

(a) Except as provided for in subsections (b) or (c) 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 OAR 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.

(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.

(c) Except for OSIPM long-term care services eligibility, if an HKC client meets all eligibility requirements for the MAA, MAF, OHP, OSIPM, or SAC program, it is the first of the month following the month in which the Department makes the eligibility determination.

(4) In the HKC program, the Office of Private Health Partnerships (OPHP) determines the effective date for enrolling an eligible child in one of the HKC program categories of coverage.

(5) 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.

(6) 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.

(7) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (3)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839

Stats. Implemented: ORS 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

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 21-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 10-18-10

Notice Publication Date:

Rules Amended: 461-135-1100

Subject: OAR 461-135-1100 about the specific eligibility requirements for an individual to receive Oregon Health Plan (OHP) program benefits is being amended to extend changes made by temporary rule on April 21, 2010 because the underlying rule was amended by other permanent changes effective July 1, 2010. This amendment states that coverage under the Kaiser Transition Program is not included in the definition of private major medical health insurance.
Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-1100

Specific Requirements; OHP

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule, OAR 461-135-1101, and 461-135-1149, the term private major medical health insurance refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than \$10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program or Kaiser Transition Program.

(2) To be eligible for the OHP program, an individual cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

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(b) Be eligible for Medicare, except that this requirement does not apply to OHP OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, an individual must be 19 years of age or older and may not be pregnant. An individual eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) May not be covered by private major medical health insurance and may not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if---

(A) The individual has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The individual's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The individual's private health insurance premium was subsidized through FHIAP; or

(D) A member of the individual's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461 135 1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with OAR 461-135-1120.

(D) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(4) To be eligible for the OHP-OPC program, an individual must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, an individual must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, an individual must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP, or OHP-OP6;

(b) Meet budgeting requirements of OAR 461-160-0700;

(c) Select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(d) Not be covered by private major medical health insurance or by any private major medical health insurance during the preceding two months. The two-month waiting period is waived if---

(A) The individual has a condition that, without treatment, would be life threatening or cause permanent loss of function or disability;

(B) The loss of health insurance was due to the loss of or a change in employment;

(C) The individual's private health insurance premium was reimbursed under OAR 461 135 0990;

(D) The individual's private health insurance premium was through FHIAP or the Office of Private Health Partnerships (OPHP) in accordance with ORS 414.231, 414.826, 414.831, and 414.839; or

(E) A member of the individual's filing group was a victim of domestic violence.

(8) A child who becomes ineligible for OHP because of age while receiving in patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 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 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 36-2009(Temp), f. & cert. ef. 12-1-09 thru 12-31-09; 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 9-2010(Temp), f. & cert. ef. 4-21-10 thru 6-30-

10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 21-2010(Temp), f. & cert. ef. 7-1-10 thru 10-18-10

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 22-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Amended: 461-155-0693

Subject: OAR 461-155-0693 about transportation services payment in the Oregon Supplemental Income Program Medical (OSIPM) is being amended to expand the allowed payments to include reimbursement of mileage for some non-commercial transportation.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-155-0693

Special Need; Transportation Services Payment; OSIPM

In the OSIPM program:

(1) The following individuals may be eligible for a transportation services payment:

(a) A client who receives SSI as his or her only income; or

(b) A client who the Department determines meets the requirements of OAR 461-125-0370(1)(c) and has adjusted income less than the SSI standard.

(2) Services eligible for payment under this rule are for transportation to non-medical and non-waivered activities and resources approved by the Department. Examples of such transportation services include, but are not limited to: reimbursement for non-commercial transportation not available through natural supports (limited to mileage only at the full United States General Services Administration mileage reimbursement rate); transportation provided by common carriers, taxicab, or bus; and assistance with purchase of a pass for public transportation.

(3) The following items are not eligible for payment under this rule: purchase of a vehicle; vehicle maintenance or repair; compensation for non-commercial transportation providers (payment to non-commercial transportation providers is limited to mileage only); and transportation services that may be obtained through other means, such as the State Medicaid Plan, waiver, or other public or private resources available to the individual, including natural supports.

(4) Payment for services authorized by this rule may not exceed \$25 per month.

(5) Service costs must be verified annually or when questionable.

Stat. Auth.: ORS 411.060, 411.083, 411.704, 411.706

Stats. Implemented: ORS 411.060, 411.083, 411.704, 411.706

Hist.: SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 22-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients

Adm. Order No.: SSP 23-2010(Temp)

Filed with Sec. of State: 7-15-2010

Certified to be Effective: 7-15-10 thru 1-11-11

Notice Publication Date:

Rules Amended: 461-115-0071

Subject: OAR 461-115-0071 about who must sign an application and complete the application process for the Department's programs administered under chapter 461 of the Oregon administrative rules is being amended to allow an application to be signed and the application process completed by a single individual in a Healthy KidsConnect (HKC), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Refugee Assistance (REF), Refugee Assistance Medical (REFM), and Temporary Assistance to Needy Families (TANF) program household.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-115-0071

Who Must Sign the Application and Complete the Application Process

(1) In the ERDC, HKC, MAA, MAF, OHP, REF, REFM, and TANF programs, the following individuals must sign the application and complete the application process:

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(a) In the MAA, MAF, REF, REFM, and TANF programs at least one *caretaker relative* (see OAR 461-001-0000) must sign the application.

(b) In the HKC and OHP programs:

(A) When there is a *parent* (see OAR 461-001-0000) in the *household group* (see OAR 461-110-0210), one *parent*.

(B) When there is no *parent* in the *household group*, the *primary person* (see OAR 461-001-0000).

(c) In the ERDC program, a *caretaker* (see OAR 461-001-0000) must sign.

(2) In the EA program:

(a) A *caretaker relative* must sign the application and complete the application process for a dependent child (see OAR 461-001-0000). If the *child* is not living with a *caretaker relative*, another adult may act on behalf of the *child*.

(b) If the *caretaker relative* lives with a *spouse* (see OAR 461-001-0000), both must sign the application.

(c) A dependent child 18 years of age who applies must sign the application and complete the application process.

(3) In the GA, GAM, and QMB programs, an adult requesting assistance and the adult's *spouse*, if they live together, must complete the application process and sign the application.

(4) In the OSIP and OSIPM programs, an adult requesting assistance and the adult's *spouse*, if they live together, must sign the application and complete the application process, if able. If the client and the *spouse* are unable to sign the application and complete the application process, this can be done by the authorized representative (see 461-115-0090). If the applicant dies prior to the determination of eligibility for OSIPM, the application may be processed if the Department receives the required verification.

(5) In the SNAP program, the *primary person*, the spouse of the *primary person*, or another adult member of the filing group must sign the application and complete the application process.

(6) A person required to sign the application but unable to sign may sign with a mark, witnessed by an employee of the field office.

Stat. Auth.: ORS 411.060, 411.070, 411.081, 411.087, 411.400, 411.404, 411.431, 411.432, 411.816 & 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.081, 411.087, 411.400, 411.404, 411.431, 411.432, 411.816 & 412.049

Hist.: SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 23-2010(Temp), f. & cert. ef. 7-15-10 thru 1-11-11

Rule Caption: Changing OARs affecting public assistance, medical assistance, or Supplemental Nutrition Assistance Program clients.

Adm. Order No.: SSP 24-2010(Temp)

Filed with Sec. of State: 7-15-2010

Certified to be Effective: 7-15-10 thru 10-18-10

Notice Publication Date:

Rules Amended: 461-135-1100

Rules Suspended: 461-135-1100(T)

Subject: OAR 461-135-1100 about the specific eligibility requirements for an individual to receive Oregon Health Plan (OHP) program benefits is being amended to remove the eligibility requirement that an OHP Adults (OHP-OPU) program client select a medical, dental, and mental health managed health care plan (MHCP) or primary care case manager (PCCM), unless exempted under other Department rules.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-135-1100

Specific Requirements; OHP

In addition to eligibility requirements applicable to the OHP program in other rules in chapter 461 of the Oregon Administrative Rules, this rule sets out specific eligibility requirements for the OHP program.

(1) For purposes of this rule, OAR 461-135-1101, and 461-135-1149, the term *private major medical health insurance* refers to health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than \$10,000 for each covered individual. This term does not include coverage under the Kaiser Child Health Program or Kaiser Transition Program.

(2) To be eligible for the OHP program, an individual cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

(b) Be eligible for Medicare, except that this requirement does not apply to OHP OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(3) To be eligible for the OHP-OPU program, an individual must be 19 years of age or older and may not be pregnant. An individual eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) May not be covered by private major medical health insurance and may not have been covered by *private major medical health insurance* during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) The individual has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The individual's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The individual's private health insurance premium was subsidized through FHIAP; or

(D) A member of the individual's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461 135 1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235 and paid in accordance with 461-135-1120.

(D) Selection of a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the HPN client is exempted by OAR 410-141-0060.

(E) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(4) To be eligible for the OHP-OPC program, an individual must be less than 19 years of age.

(5) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(6) To be eligible for the OHP-OPP program, an individual must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(7) To be eligible for the OHP-CHP program, an individual must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP, or OHP-OP6;

(b) Meet budgeting requirements of OAR 461-160-0700;

(c) Select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(d) Not be covered by *private major medical health insurance* or by any *private major medical health insurance* during the preceding two months. The two-month waiting period is waived if:

(A) The individual has a condition that, without treatment, would be life threatening or cause permanent loss of function or disability;

(B) The loss of health insurance was due to the loss of or a change in employment;

(C) The individual's private health insurance premium was reimbursed under OAR 461 135 0990;

(D) The individual's private health insurance premium was through FHIAP or the Office of Private Health Partnerships (OPHP) in accordance with ORS 414.231, 414.826, 414.831, and 414.839; or

(E) A member of the individual's filing group was a victim of domestic violence.

(8) A child who becomes ineligible for OHP because of age while receiving in patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831 & 414.839

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831 & 414.839

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 8-2006, f. & cert. ef. 6-1-06; SSP 13-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 36-2009(Temp), f. & cert. ef. 12-1-09 thru 12-31-09; 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 9-2010(Temp), f. & cert. ef. 4-21-10 thru 6-30-

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10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 21-2010(Temp), f. & cert. ef. 7-1-10 thru 10-18-10; SSP 24-2010(Temp), f. & cert. ef. 7-15-10 thru 10-18-10

Stat. Auth.: ORS 409.010, 409.110 & 409.050
Stats. Implemented: ORS 414.025 & 414.065
Hist.: DMAP 7-2008(Temp), f. 3-17-08 & cert. ef. 4-1-08 thru 9-15-08; DMAP 14-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 29-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-25-10; DMAP 37-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 18-2010, f. 6-23-10, cert. ef. 7-1-10

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**Department of Human Services,
Division of Medical Assistance Programs
Chapter 410**

Rule Caption: Pilot project for prenatal coverage for CAWEM women; adding an additional participatory county.

Adm. Order No.: DMAP 18-2010

Filed with Sec. of State: 6-23-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 410-120-0030

Subject: The General rules program administrative rules govern the Division of Medical Assistance Programs (Division) payments for services provided to certain clients. The Division amended this rule, effective July 1, 2010, to add an additional county (Lance County) to participate in the pilot project, subject to the Centers to Medicare and Medicaid Services (CMS) approval. The Division added Lance County providing prenatal care during pregnancy and labor and delivery services for CAWEM women. Early prenatal care positively influences healthy outcomes for both mother and child to mitigate adverse outcomes of high-risk pregnancies and is accepted standard of care. Lack of access to prenatal care may result in increased risk at birth and in infancy for children, and may result in increased costs of medical care to the state. This pilot program is operated under an amendment to Oregon's Children's health Insurance Program (CHIP) plan. Oregon anticipates receiving federal approval for the pilot project, effect on or before July 1, 2010.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0030

Children's Health Insurance Program

(1) The Children's Health Insurance Program (CHIP) is a federal non-entitlement program for children under 19 years of age that provides health coverage for uninsured, low-income children who are ineligible for Medicaid and meet the CHIP eligibility requirements. The CHIP program is administered by the Department of Human Services (Department) in accordance with the Oregon Health Plan waiver and the CHIP state plan. The General Rules (OAR 410-120-0000 et. seq.) and Oregon Health Plan Rules (OAR 410-141-0000 et. seq.) applicable to the Medicaid program are also applicable to the Department's CHIP program.

(2) Eligibility criteria, including but not limited to income methodologies and citizenship requirements for medical assistance applicable to children under the age of 19 years, are established in OAR chapter 461 through the program acronym OHP-CHIP.

(3) Benefit package of covered services: Children determined eligible for CHIP receive the same OHP Plus benefits as covered under Medicaid categorically needy program. (For benefits refer to 410-120-1210).

(4) CHIP Pilot project — Prenatal coverage for CAWEM under CHIP:

(a) Notwithstanding subsections (2) and (3) of this rule, CAWEM pregnant women residing in the participating counties during pregnancy will receive expanded medical services (OHP Plus benefit package, as limited under subsection (d) of this subsection) to provide prenatal care for the unborn child and labor and delivery services through this pilot program:

- (A) Effective 4/1/08 Multnomah and Deschutes;
- (B) Effective 10/1/09 Benton, Clackamas, Hood River and Jackson;
- (C) Effective 7/1/2010 Lane.

(b) This population is exempt from managed care enrollment. The preferred service delivery system will be Primary Care Management (PCM). Fee-For-Service (FFS) enrollment will be available by exception for continuity of care or other Department-approved reasons that could justify disenrollment from a PCM under OAR 410-141-0085;

(c) Pilot project services continue through labor and delivery. The day after pregnancy ends, eligibility for medical services is based on eligibility categories established in OAR chapter 461;

- (d) The following services are not covered for the pilot project:
 - (A) Postpartum care beyond the global payment;
 - (B) Sterilization;
 - (C) Abortion;
 - (D) Death with dignity services;
 - (E) Hospice.

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Rule Caption: January 2010 Age Guidelines for Brokerage child Transports.

Adm. Order No.: DMAP 19-2010

Filed with Sec. of State: 6-23-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 410-136-0245

Subject: The Medical transportation Services Program administrative rules govern Division of Medical Assistance Programs' (Division) payments for services provided to certain clients. Having temporarily amended OAR 410-136-0245, the Division permanently amended the rule to clarify that an additional employee or Department volunteer or for a second transports provided under OAR 410-136-0240. This is necessary to ensure child clients maintain access to appropriate transportation services.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-136-0245

Child Transports

(1) The safety and welfare of children is the primary objective in the coordination, scheduling, and transporting of Oregon Health Plan (OHP) eligible children to medical appointments. This rule defines the requirements for attendants during child transports:

(a) Eligible children under 12 years old must have an attendant while traveling to medical appointments;

(b) The requirements for having an attendant are specific to child transports provided by transportation brokerages.

(2) The parent or legal guardian is responsible for assuring that an attendant is available to accompany the child to and from a medical appointment.

(3) Guidelines for children in the custody of the Oregon State Department of Human Services (Department) will be established and administered by the Department's Children, Adults and Families (CAF) Division. To the extent that their requirements are different from this rule, the CAF Division requirements supersede this rule:

(a) The CAF Division will administer volunteer driver program guidelines for children under the care and custody of the Department for rides that are not coordinated by the transportation brokerage;

(b) Volunteer drivers who regularly transport children to medical services are subject to driver safety standards and criminal background checks set forth by the CAF Division;

(c) Children and young adults with special physical or developmental needs must have an attendant, regardless of age;

(d) This rule does not apply to medical transportation that is provided by a local educational agency as part of school transportation;

(e) If a child requires secured transportation, the requirements of OAR 410-136-0240 apply in addition to the requirements of this rule.

(4) An attendant may be the mother, father, stepmother, stepfather, or legal guardian of the child. An attendant may also be a brother, sister, stepbrother, or stepsister of the child, who is at least 18 years or older, and authorized by the parent or legal guardian to be the attendant.

(5) Representatives of the transportation brokerage, or their contracted transportation providers, may require written authorization for the attendant from a child's parent or legal guardian.

(6) Transportation brokerages will not bill the Department additional charges when an attendant is required during transport.

(7) The appropriate attendant must accompany the eligible child from the pick-up location, to the destination, and on the return trip. The attendant must also remain with the child during their appointment. The attendant may not be accompanied by other persons unless they are authorized by the parent or legal guardian to also be in attendance or unless the other person is an eligible child traveling to the same location for a medical appointment.

(8) The transportation brokerage, under an intergovernmental agreement (IGA) with the state, authorizes, schedules, and coordinates medical transportation for eligible OHP+ children. The brokerage will ensure that transportation providers:

- (a) Meet the requirements defined in the IGA;
- (b) Complete contractually required criminal background and driving record checks for drivers;

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(c) Monitor driver completion of required driver safety trainings.

(9) Child safety seats shall be provided and installed by the parent, guardian or adult caregiver for the child, as required by state law. If a parent fails to provide a child safety seat that is in compliance with state law, the provider cannot transport the child.

(10) Attendants are not required for:

(a) Non-emergent ambulance transports, unless an ambulance company provides the ride and bills it through a transportation brokerage as a wheelchair or stretcher trip. See OAR 410-136-0280, Required Documentation. For all other non-emergent ambulance rides, refer to requirements for an attendant under OAR 410-136-0080, Additional Client Transport;

(b) Secured transports provided under OAR 410-136-0240, Secured Transports; or

(c) Transports provided by a Department employee or Department volunteer.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: DMAP 42-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 9-24-10; DMAP 19-2010, f. 6-23-10, cert. ef. 7-1-10

Rule Caption: Pilot project for prenatal coverage for CAWEM women; adding an additional participating county.

Adm. Order No.: DMAP 20-2010

Filed with Sec. of State: 6-23-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 410-147-0365

Rules Repealed: 410-147-0365(T)

Subject: The Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) Services program administrative rules govern DMAP payment for services to certain clients. The Division permanently amended the temporary rule 410-147-0365 without further revisions. In March 23, 2010 CMS notified the Division that the State Plan Amendment (SPA) that was submitted to extend the Obstetric Alternative Payment Methodology (OB APM) to more Rural Health Clinics (RHCs) will not be approved as submitted.

CMS advised the Division to withdraw the SPA as soon as possible. CMS stated they will allow for the Division to reimburse OB delivery procedures according to the physician fee schedule to a "target" provider group, which can be those RHCs that the Division targeted (and who the Division submitted an OB APM SPA to include) to receive the OB APM. Other text is revised to improve readability and to take care of necessary "housekeeping" corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-147-0365

Rural Health Clinic Obstetrics Care Delivery Procedures Reimbursement

Reimbursement for obstetric delivery procedures by the Division of Medical Assistance Programs (Division) to eligible Medicare-certified Independent RHCs will be according to the physician fee schedule and outside of the Prospective Payment System (PPS).

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 18-2005(Temp), f. 3-15-05, cert. ef. 3-18-05 thru 9-1-05; OMAP 26-2005, f. 4-20-05, cert. ef. 6-1-05; OMAP 48-2005(Temp), f. & cert. ef. 9-15-05 thru 2-15-06; OMAP 64-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 20-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 9-2010(Temp), f. 4-13-10, cert. ef. 5-1-10 thru 10-26-10; DMAP 20-2010, f. 6-23-10, cert. ef. 7-1-10

Rule Caption: Hospital Provider Tax Rate Reduction.

Adm. Order No.: DMAP 21-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 410-050-0861

Subject: This amendment reduces the hospital provider tax rate from 2.8% to 2.32%, effective July 1, 2010.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

410-050-0861

Tax Rate

(1) The tax rate for the period beginning January 1, 2005 and ending June 30, 2006 is .68 percent.

(2) The tax rate for the period beginning July 1, 2006 and ending December 31, 2007 is .82 percent.

(3) The tax rate for the period beginning January 1, 2008 and ending June 30, 2009 is .63 percent.

(4) The tax rate for the period of January 1, 2008 through June 30, 2009 does not apply to the period beginning July 1, 2009.

(5) The tax rate for the period beginning July 1, 2009 and ending September 30, 2009 is .15 percent.

(6) The tax rate for the period beginning October 1, 2009 and ending June 30, 2010 is 2.8 percent.

(7) The tax rate for the period beginning July 1, 2010 is 2.32 percent.

Stat. Auth.: ORS 409.050, 410.070 & 411.060

Stats. Implemented: ORS 409.750, 2009 OL Ch. 867 §17, 2007 OL Ch. 780 §1 & 2003 OL Ch. 736 § 2 & 3

Hist.: OMAP 28-2005(Temp), f. & cert. ef. 5-10-05 thru 11-5-05; OMAP 34-2005, f. 7-8-05, cert. ef. 7-11-05; OMAP 14-2006, f. 6-1-06, cert. ef. 7-1-06; DMAP 29-2007, f. 12-31-07, cert. ef. 1-1-08; DMAP 3-2008, f. & cert. ef. 1-25-08; DMAP 24-2009, f. & cert. ef. 7-1-09; DMAP 25-2009(Temp), f. & cert. ef. 7-15-09 thru 1-10-10; DMAP 27-2009, f. & cert. ef. 9-1-09; DMAP 33-2009, f. & cert. ef. 10-1-09; DMAP 21-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: TCM for Human Immunodeficiency Virus, Babies First/CaCoon, Asthma Healthy Homes, Tribal, Early Intervention/Early Childhood Special Education, Substance Abusing Pregnant Women and Parents.

Adm. Order No.: DMAP 22-2010

Filed with Sec. of State: 6-30-2010

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Rules Adopted: 410-138-0400, 410-138-0420, 410-138-0440, 410-138-0460

Rules Amended: 410-138-0000, 410-138-0005, 410-138-0007, 410-138-0009, 410-138-0020, 410-138-0040, 410-138-0060, 410-138-0080, 410-138-0300, 410-138-0360, 410-138-0380, 410-138-0390, 410-138-0500, 410-138-0540, 410-138-0560, 410-138-0600, 410-138-0640, 410-138-0660, 410-138-0700, 410-138-0710, 410-138-0740, 410-138-0760, 410-138-0780

Rules Repealed: 410-138-0530, 410-138-0610

Subject: The Division of Medical Assistance Programs (Division) amended rules to bring the HIV, Babies First/CaCoon, and Substance Abusing Pregnant Women and Parents With Children Under Age 18 and Early Intervention Early Childhood in Special Education Programs into compliance with the State Plan Amendment (SPA) and current Federal rules and regulations. The expansion of HIV and Substance Abusing Pregnant Women and Parents With Children Under Age 18 TCM programs is approved and the Department of Human Services (Department) will begin implementation to extend the existing programs to new unit of government providers. The Division adopted four new rules, to implement a new program - Asthma Healthy Homes (SPA 10-02, approval pending). Approval for SPA 8-14 is pending however the Division revised rules in the Tribal program to clarify federal requirements.

The Division swapped text in 410-138-0000 with text in 410-138-0020 to rearrange placement of information within the Rulebook: consolidated 410-138-0610 with 410-138-0600, repealing 410-138-0610; and 410-138-0530 is consolidated with 410-138-0500, repealing 410-138-0530.

All program rules are updated to correct statutory information and change the acronyms for the Department of Human Services from (DHS) to (Department) and the Division of Medical Assistance Programs from (DMAP) to (Division). There may be other minor "housekeeping" corrections to take care of misspelled words, punctuation or grammar and rule text consistency.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-138-0000

Targeted Case Management Definitions

(1) This rule is to be used in conjunction with other Targeted Case Management (TCM) Program rules 410-138-0005 through 410-138-0009

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and the Division of Medical Assistance Programs' General Rules (chapter 410, division 120).

(2) **Assessment** – The act of gathering information and reviewing historical and existing records of an eligible client in a target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager will gather information from family members, medical providers, social workers, and educators, if necessary.

(3) **Care Plan** – A TCM Care Plan is a multidisciplinary plan, which contains a set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(4) **Case Management** – Services furnished by a case manager to assist individuals eligible under the Medicaid State plan in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18. See also definition for “Targeted Case Management.”

(5) **Department** – Department of Human Services.

(6) **Division** – Division of Medical Assistance Programs (DMAP).

(7) **Duplicate payments** – Payments are considered “duplicate” if more than one payment is made for the same services to meet the same need for the same client at the same point in time.

(8) “Early intervention (EI)” means services for preschool children with disabilities from birth until three years of age, including children who are homeless and their families. The services are:

(a) Based on scientifically-based research, to the extent practicable;

(b) Designed to meet the child’s developmental needs and the needs of the family related to enhancing the child’s development as identified by the IFSP team, in any one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development;

(c) Selected in collaboration with the parents;

(d) Provided:

(A) Under public supervision;

(B) By personnel qualified in accordance with criteria established by rules of the State Board of Education; and

(C) In conformity with an individualized family service plan;

(e) No cost to parents;

(f) Meet all applicable state requirements; and

(g) Include family training, counseling, in-home visits; special instruction; speech-language pathology and audiology services, and sign language and cued language services; occupational therapy; physical therapy; psychological services; service coordination; medical services only for diagnostic or evaluation purposes; early identification, screening, and assessment services; health services necessary to enable the child to benefit from other early intervention services; social work services; vision services; assistive technology devices and services; and transportation and related costs that are necessary to enable a child and the child’s family to receive another early intervention service.

(9) “Early childhood special education (ECSE)” means free, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for public school, including instruction in physical education, speech-language services, travel training, and orientation and mobility services. Instruction is provided in any of the following settings: home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings.

(10) **Early Intervention/Early Childhood Special Education (EI/ECSE)** services are services provided to a preschool child with disabilities, eligible under the Individuals with Disabilities Education Act (IDEA), from birth until they are eligible to attend public school, pursuant to the eligible child’s Individualized Family Service Plan (IFSP) (see definition of IFSP below).

(11) **EI/ECSE Case manager** (i.e., service coordinator) – An employee of the EI/ECSE contracting or subcontracting agency meeting the personnel standards requirements in OAR 581-015-2900. The EI/ECSE case manager serves as a single point-of-contact and is responsible for coordinating all services across agency lines for the purpose of assisting an eligible client to obtain needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) identified in the eligible client’s care plan in coordination with the client’s IFSP.

(12) **EI/ECSE Targeted Case Management program** – as a service under the State plan, includes case management services furnished to eligible EI/ECSE preschool children age 0-5 with disabilities, assisting them to gain access to needed medical, social, educational, developmental and other appropriate services (such as housing or transportation) in coordination

with their IFSP. EI/ECSE TCM Providers must meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2710 EI/ECSE; and must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or be sub-contractors with such a contractor. Medicaid reimbursement for EI/ECSE TCM services is available only to eligible clients in the target group and does not restrict an eligible client’s free choice of providers. See definition for “eligible client”.

(13) **Eligible client** – An individual who is deemed eligible for Medicaid or the Children’s Health Insurance Program (CHIP) by the Department and eligible for case management services (including TCM services) as defined in the Medicaid State plan, at the time the services are furnished. TCM services are allowable only for clients who are categorically eligible. The Medicaid State Plan does not allow TCM services for clients who are covered under the Medicaid standard benefit package.

(14) **Individualized Family Service Plan (IFSP)** – A written plan of early childhood special education, related services, early intervention services, and other services developed in accordance with criteria established by the State Board of Education for each child eligible for services. See OAR 581-015-2700 to 581-015-2910, Early Intervention and Early Childhood Special Education Programs.

(15) **Medical Assistance Program** – A program that provides and pays for health services for eligible Oregonians. The Oregon Medical Assistance Program includes TCM services provided to clients eligible under the Oregon Health Plan (OHP) Title XIX, and the Children’s Health Insurance Program (CHIP) Title XXI. The Medical Assistance Program is administered by the Division.

(16) **Monitoring** – Ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client’s health care decision maker(s), family members, providers or other entities or individuals when the purpose of the contact is directly related to managing the eligible client’s care to ensure the care plan is effectively implemented.

(17) **Reassessment** – Periodically re-evaluating the eligible client to determine whether or not medical, social, educational or other services continue to be adequate to meet the goals and objectives identified in the care plan. Reassessment decisions include those to continue, change or terminate TCM services. A reassessment must be conducted at least annually or more frequently if changes occur in an eligible client’s condition; or when resources are inadequate or the service delivery system is non-responsive to meet the client’s identified service needs.

(18) **Referrals** – Performing activities such as scheduling appointments that link the eligible client with medical, social, or educational providers, or other programs and services, and follow-up and documentation of services obtained.

(19) **Targeted Case Management (TCM) Services** – Case management services furnished to a specific target group of eligible clients under the Medicaid State plan to gain access to needed medical, social, educational, and other services (such as housing or transportation). TCM services are available only to eligible clients.

(20) **Unit of Government** – A city, a county, a special purpose district, or other governmental unit in the state.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 409.010 & 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0005

Payment for Targeted Case Management Services Eligible for Federal Financial Participation

(1) This rule is to be used in conjunction with Targeted Case Management (TCM) rules 410-138-0000 through 410-138-0009 and 410-138-0390, and the Division of Medical Assistance Programs’ (Division) General Rules (chapter 410, division 120).

(2) The TCM services rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(3) Payment will be made to the TCM provider enrolled with the Department of Human Services (Department) as a unit of government provider meeting the requirements set forth in the provider enrollment agreement.

(4) Signing the provider enrollment agreement sets forth the relationship between the State of Oregon, the Department and the TCM provider and constitutes agreement by the TCM provider to comply with all applicable Department rules, and federal and state laws and regulations.

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Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

(5) The TCM provider will bill according to administrative rules in chapter 410, division 138 and the TCM supplemental information. Payments will be made using the Medicaid Management Information System (MMIS) and the TCM provider will retain the full payment for covered services provided. The TCM provider must have a Trading Partner Agreement with the Department prior to submission of electronic transactions.

(6) TCM authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rates in effect during the quarter when the TCM claims will be paid:

(a) The TCM provider's non-federal matching share means the public funds share of the Medicaid payment amount. Pursuant to the Social Security Act, 42 CFR 433.51, public funds may be considered as the state's share in claiming federal financial participation, if the public funds meet the following conditions:

(A) The public funds are transferred to the Department from public entities that are units of government;

(B) The public funds are not federal funds or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds must be allowable under the Social Security Act 42 CFR 433 Subpart B;

(b) The unit of government TCM provider must pay the non-federal matching share to the Department in accordance with OAR 410-120-0035.

(7) Before the Department pays for TCM claims, the Department must receive the corresponding local match payment as described in this rule. Failure to timely pay the non-federal matching funds to the Department will delay payment and may require the TCM provider to resubmit the claims.

(8) The Department will not be financially responsible for payment of any claim that the Centers for Medicare and Medicaid Services (CMS) disallows under the Medicaid program. If the Department has previously paid the TCM provider for any claim, which CMS disallows, the TCM provider must reimburse the Department the amount of the claim that the Department has paid to the TCM provider, less any amount previously paid by the unit of government TCM provider to the Department for the non-federal match portion for that claim.

(9) Providers can only bill Medicaid for allowable activities in the TCM program, that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, educational, and other services. One or more of the following allowable activities must occur before billing:

(a) Assessment;

(b) Development of a care plan;

(c) Referral (including follow up); and

(d) Monitoring (including follow up).

(10) TCM claims must not duplicate payments made to:

(a) Public agencies or private entities for any other case management activities or direct services provided under the State Plan or the Oregon Health Plan (OHP), through fee for service, managed care, or other contractual arrangement, that meet the same need for the same client at the same point in time;

(b) A TCM provider by program authorities under different funding authority than the Oregon Health Plan, including but not limited to other public health funding;

(c) A TCM provider for administrative expenditures reimbursed under agreement with the Department or any other program or funding source.

(11) Medicaid is only liable for the cost of otherwise allowable case management services if there are no other third parties liable to pay. However, while schools are legally liable to provide IDEA-related health services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903(c) of the Act requires Medicaid to be primary to the U.S. Department of Education for payment for covered Medicaid services furnished to a child with a disability. These services may include health services included in a child's Individualized Education Program (IEP) or Individual Family Service Plan (IFSP) under the IDEA. Payment for those services that are included in the IEP or IFSP would not be available when those services are not covered Medicaid services.

(12) The Department's acceptance of cost data provided by provider organizations for the purpose of establishing rates paid for TCM services does not imply or validate the accuracy of the cost data provided.

(13) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

410-138-0007

Targeted Case Management — Covered Services

(1) This rule is to be used in conjunction with Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and the Division General Rules (chapter 410, division 120).

(2) Targeted case management services may be furnished only to eligible clients. An "eligible client" is a person who is categorically eligible for Medicaid and eligible for case management services (including targeted case management services) as defined in the Medicaid State plan, at the time the services are furnished.

(3) "Targeted case management services" are case management services provided to a specific target group of individuals that assist individuals eligible under the State plan in gaining access to needed medical, social, educational, and other services (such as housing or transportation).

(4) Targeted case management services billed to Medicaid must be for allowable activities and include one or more of the following components:

(a) Assessment of an eligible client in the target group to determine the need for medical, educational, social, or other services as follows:

(A) Taking client history;

(B) Identifying the needs of the client, and completing related documentation;

(C) Gathering information from other sources, such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible client;

(D) Periodically reassessing a client to determine whether the client's needs or preferences have changed. A reassessment must be conducted at least annually or more frequently if changes occur in an individual's condition;

(b) Development of a care plan based on the information collected through the assessment or periodic reassessment, specifying the goals and actions to address the medical, social, educational, and other services needed by the eligible client. This may include:

(A) Active participation of the eligible client in the target group; or

(B) Working with the eligible client or the eligible client's authorized health care decision maker(s) and others to develop goals and identify a course of action to respond to the assessed needs of the eligible client;

(c) Referral, linking and coordination of services and related activities such as:

(A) Scheduling appointments for the client in the target group to obtain needed services; and

(B) Activities that help link the eligible client with medical, social, or educational providers, or other programs and services (e.g., food vouchers, transportation, child care, or housing assistance) that address identified needs and achieve goals specified in the care plan. The case management referral activity is completed once the referral and linkage has been made;

(C) Reminding and motivating the client to adhere to the treatment and services schedules established by providers;

(d) Monitoring or ongoing face-to-face or other contact;

(A) Monitoring and follow-up activities include activities and contacts:

(i) To ensure the care plan is effectively implemented;

(ii) To help determine whether the services are being furnished in accordance with the eligible client's care plan;

(iii) To determine whether the care plan adequately addresses the needs of the eligible client in the target group;

(iv) To adjust the care plan to meet changes in the needs or status of the eligible client;

(B) Monitoring activities may include contacts with:

(i) The participating eligible client in the target group;

(ii) The eligible client's healthcare decision maker(s), family members, providers, or other entities or individuals when the purpose of the contact is directly related to the management of the eligible client's care.

(5) Targeted case management services billed to Medicaid must be documented in individual case records for all individuals receiving case management. The documentation must include:

(a) The name of the individual;

(b) The dates of the case management services;

(c) The name of the provider agency (if relevant) and the person providing the case management service;

(d) The nature, content, units of the case management services received and whether goals specified in the care plan have been achieved;

(e) Whether the individual has declined services in the care plan;

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(f) The need for, and occurrences of, coordination with other case managers;

(g) A timeline for obtaining needed services;

(h) A timeline for reevaluation of the plan.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0009

Targeted Case Management — Services Not Covered

(1) This rule is to be used in conjunction with Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0007 and the Division General Rules (chapter 410, division 120).

(2) TCM services not covered include:

(a) Direct delivery of an underlying medical, educational, social or other service, to which the eligible client has been referred;

(b) Providing transportation to a service to which an eligible client is referred;

(c) Escorting an eligible client to a service;

(d) Providing child care so that an eligible client may access a service;

(e) Contacts with individuals who are not categorically eligible for Medicaid, or who are categorically eligible for Medicaid but not included in the eligible target population when those contacts relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care. Individuals receiving the Standard benefit package are not categorically eligible for Medicaid and therefore are not eligible for targeted case management;

(f) Assisting an individual, who has not yet been determined eligible for Medicaid, to apply for or obtain this eligibility;

(g) TCM services provided to an individual if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs;

(h) Activities for which third parties are liable to pay.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0020

Targeted Case Management Babies First/CaCoon Programs

(1) This rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule is to be used in conjunction with other Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and the Division General Rules (OAR 410-120).

(3) The TCM Babies First/CaCoon Programs are medical assistance programs operated by public health authorities enrolled as TCM providers with the Department. Participation by providers is voluntary and subject to approval by the Department and the Centers for Medicare and Medicaid Services. The TCM Babies First/CaCoon program authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims. (See 410-138-0005 Payment for TCM Services Eligible for Federal Financial Participation.) The TCM Program rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by section 1915(g) of the Social Security Act, 42 USC (1396n)(g).

(4) The TCM Babies First/CaCoon Program rules explain the Oregon Medicaid program's policies and procedures for reimbursing services provided under Babies First/CaCoon. The Babies First program improves access to needed medical, psychosocial, educational, and other services for at risk infants and children through four years of age. Likewise, the CaCoon program improves access to needed medical, psychosocial, educational, and other services for infants, children and youth through age twenty with specific diagnoses or very high risk factors. These clients are categorical eligibles covered by Medicaid and are at risk of poor health outcomes as outlined in OAR 410-138-0040, Risk Factors. Please refer to the State Plan Amendment for participating counties.

(5) TCM Babies First/CaCoon services include management of medical and non-medical services, which address health, psychosocial, economic, nutritional, and other needs. Home visits constitute a significant part of the delivery of targeted case management services, provided by a Babies

First/CaCoon case manager consistent with these rules. No direct care services are authorized as part of case management activities.

(6) Provision of TCM Babies First/CaCoon services may not restrict an eligible client's choice of providers:

(a) Eligible clients must have free choice of available TCM Babies First/CaCoon Program service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n;

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 409.110 & 414.065

Hist: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0040

Targeted Case Management Babies First/CaCoon Program Risk Criteria

(1) This rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule is to be used in conjunction with Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and the Division General Rules (chapter 410, division 120).

(3) Medical risk factors for infants and preschool children (birth through age four):

(a) Drug exposed infant;

(b) Alcohol exposed infant;

(c) Infant Human Immunodeficiency Virus (HIV) Positive;

(d) Maternal Phenylketonuria (PKU) or HIV Positive;

(e) Intracranial hemorrhage grade I or II;

(f) Seizures or maternal history of seizures;

(g) Perinatal asphyxia;

(h) Small for gestational age;

(i) Very low birth weight (1500 grams or less);

(j) Mechanical ventilation for 72 hours or more prior to discharge;

(k) Neonatal hyperbilirubinemia;

(l) Congenital infection (e.g., Toxoplasmosis, Rubella, Cytomegalovirus, Herpes Simplex Virus, Other Infections);

(m) Central Nervous System (CNS) infection;

(n) Head trauma or near drowning;

(o) Failure to grow;

(p) Suspect vision impairment;

(q) Family history of childhood onset hearing loss;

(r) Prematurity;

(s) Lead exposure;

(t) Suspect hearing loss;

(4) Social risk factors:

(a) Maternal age 16 years or less;

(b) Parents with developmental disabilities or intellectual impairment;

(c) Parental alcohol or substance abuse;

(d) At-risk caregiver;

(e) Concern of parent/provider;

(f) Parent with limited financial resources;

(g) Parent with history of mental illness;

(h) Parent with child welfare history;

(i) Parent with domestic violence history;

(j) Parent with sensory impairment or physical disability;

(k) Other evidence-based social risk factors.

(5) Very high risk medical factors (birth through age 20):

(a) Intraventricular hemorrhage (grade III, IV);

(b) Periventricular leukomalacia (PVL) or chronic subdurals;

(c) Perinatal asphyxia and seizures;

(d) Seizure disorder;

(e) Oral-motor dysfunction requiring specialized feeding program (including gastrostomy);

(f) Chronic lung disorder;

(g) Suspect neuromuscular disorder.

(6) Risk categories (birth through 20 years):

(a) Heart disease;

(b) Chronic orthopedic disorders;

(c) Neuromotor disorders including cerebral palsy and brachial nerve palsy;

(d) Cleft lip and palate and other congenital defects of the head and face;

(e) Genetic disorders, e.g., cystic fibrosis, neurofibromatosis;

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- (f) Multiple minor physical anomalies;
- (g) Metabolic disorders, e.g., PKU;
- (h) Spina bifida;
- (i) Hydrocephalus or persistent ventriculomegaly;
- (j) Microcephaly and other congenital or acquired defects of the CNS;
- (k) Hemophilia;
- (l) Organic speech disorders;
- (m) Hearing loss;
- (n) Traumatic brain injury;
- (o) Fetal alcohol spectrum disorder;
- (p) Autism, autism spectrum disorder;
- (q) Behavioral or mental health disorder with developmental delay;
- (r) Chromosome disorders;
- (s) Positive newborn blood screen;
- (t) HIV, seroconversion;
- (u) Visual Impairment;
- (v) Developmental delay;
- (w) Other chronic conditions not listed.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 409.110 & 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0060

Provider Requirements — Babies First/Cocoon Program

(1) This rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule is to be used in conjunction with Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and the Division General Rules (chapter 410, division 120).

(3) TCM Babies First/CaCocoon organizations must be public health authorities. The providers must demonstrate the ability to provide all core elements of case management services including:

- (a) Comprehensive nursing assessment of client needs;
- (b) Reassessment of the client's status and needs annually or more frequently with a significant change in client's condition;
- (c) Comprehensive care/service plan development;
- (d) Linking and coordination of services;
- (e) Ongoing monitoring and follow-up of services.

(4) Program providers must demonstrate the following TCM experience and capacity:

- (a) Demonstrated case management experience in coordinating and linking such community resources as required by the target population;
- (b) Demonstrated experience with the target population;
- (c) An administrative capacity to ensure quality of services in accordance with state and federal requirements;
- (d) A financial management capacity and system that provides documentation of services and costs;
- (e) Ability to link with the Title V Statewide Maternal and Child Health Data System or provide another statewide computerized tracking and monitoring system;
- (f) Capacity to document and maintain individual case records in accordance with state and federal requirements, including HIPAA Privacy requirements applicable to case management services, ORS 192.518–192.524, 179.505 and 411.320;

(g) A sufficient number of staff to meet the case management service needs of the target population;

(h) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program;

(i) Enrolled as a TCM provider with the Division.

(5) The targeted case manager must be:

(a) An employee of a local county health department, or other public or private agency contracted by a local county health department; and

(b) A licensed registered nurse with one year of experience in community health, public health, or child health nursing, or be a community health worker, family advocate, or promotora working under the direction of the above; and

(c) Working under the policies, procedures, and protocols of the State Title V Maternal and Child Health Program and Medicaid.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 409.010, 409.110 & 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0080

Babies First/CaCocoon Program Billing Policy and Codes

(1) This rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule is to be used in conjunction with Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and with the Division General Rules (OAR 410-120).

(3) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

(4) Billing criteria for the Babies First/CaCocoon program are as follows:

(a) Use procedure code "T1016" for Babies First/CaCocoon — Targeted Case Management. Maximum billing for the T1016 procedure code is one time per day per client. One of the four allowable activities listed below must occur in order to bill:

- (A) Assessment;
- (B) Development of Care Plan;
- (C) Referral;
- (D) Monitoring;

(b) Any place of service (POS) is valid;

(c) Prior authorization is not required;

(d) The provider must use Diagnosis Code "V201"

(5) The Division will not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client's care plan. ("Duplicate payment" is defined in 410-138-0000). Medical services must be provided and billed separately from case management services. The Department will recover duplicate payments.

(6) A unit of service can only be billed once per day under one procedure code, under one provider number and for only one TCM encounter.

(7) The Division may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 409.010, 409.050, 409.110 & 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0300

Targeted Case Management Human Immunodeficiency Virus Program

(1) Contingent on CMS approval, this rule is in effect for services rendered retroactive to July 1, 2009.

(2) The Targeted Case Management (TCM) Program's Human Immunodeficiency Virus (HIV) administrative rules are to be used in conjunction with the Division General Rules (OAR 410-120) and other Targeted Case Management Rules 410-138-0000 through 410-138-0009.

(3) The TCM HIV program is a medical assistance program operated by unit of government providers. Participation by providers is voluntary and subject to approval by the Department of Human Services (Department) and the Centers for Medicare and Medicaid Services (CMS). The TCM HIV program authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims. (See 410-138-0005 Payment for Targeted Case Management Services Eligible for Federal Financial Participation.) The TCM program rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by section 1915(g) of the Social Security Act, 42 USC (1396n)(g).

(4) The TCM HIV rules explain the Oregon Medicaid Program's policies and procedures for reimbursing HIV TCM services. This program improves access to needed medical, psychosocial, educational, and other services for Medicaid eligible clients with symptomatic or asymptomatic HIV disease. Contingent upon and immediately upon receipt of CMS approval, the Division will begin implementation to extend the TCM HIV program to other counties. Without targeted case management services an eligible client's ability to remain safely in their home may be at risk.

(5) TCM HIV program services include management of medical and non-medical services, which address physical, psychosocial, nutritional, educational, and other needs. Home visits constitute an integral part of the delivery of TCM services, provided by a TCM HIV case manager consistent with these rules. No direct care services are authorized as part of case management activities.

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(6) Provision of TCM HIV services may not restrict an eligible client's choice of providers:

(a) Eligible clients must have free choice of available TCM HIV service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n;

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.050 & ORS 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0360

Targeted Case Management Human Immunodeficiency Virus (HIV) Program — Provider Requirements

(1) Contingent on Centers for Medicare and Medicaid Services (CMS) approval, this rule is in effect for services rendered retroactive to July 1, 2009.

(2) Targeted Case Management (TCM) Human Immunodeficiency Virus (HIV) provider organizations must be unit of government providers. The providers must demonstrate the ability to provide all core elements of case management services including:

- (a) Triage assessment and comprehensive assessment;
- (b) Reassessment of the client's status and needs;
- (c) Comprehensive care and service plan development;
- (d) Referral and linking/coordination of services;
- (e) Monitoring and follow-up of referral and related services.

(3) Program providers must demonstrate the following targeted case management experience and capacity:

(a) Coordination and linking of community resources as required by the target population;

(b) Demonstrated and documented experience providing services for the target population;

(c) Staffing levels sufficient to meet the case management service needs of the target population;

(d) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(e) A financial management capacity and system that provides documentation of services and costs and is able to generate quarterly service utilization reports that can be used to monitor services rendered against claims submitted and paid. The service utilization reporting requirements are as follows:

(A) Report on the number of unduplicated clients receiving services during the reporting period;

(B) Report on the number of FTE case managers providing services during the reporting period;

(C) Report on the number of distinct case management activities performed during the reporting period (triage assessments, comprehensive assessments, re-assessments, care plan development, referral and related services, and monitoring and follow-up) along with the total number of 15-minute increments associated with each activity category;

(f) The capacity to document and maintain individual case records in accordance with state and federal requirements, including HIPAA Privacy requirements applicable to Case Management Services, ORS 192.51-192.524, 179.505 and 411.320;

(g) A demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(h) Are enrolled as a unit of government TCM provider with the Department of Human Services (Department) and meeting the requirements set forth in the provider enrollment agreement.

(4) Case managers must possess the following education and qualifications:

(a) A current active Oregon registered nurse (RN) license or Bachelor of Social Work, or other related health or human services degree from an accredited college or university; and

(b) Documented evidence of completing the Department's HIV Care and Treatment designated HIV Case Manager training, and must participate in Department's on-going training for HIV case managers. The training must either be provided by the Department, or be approved by the Department and provided by the TCM provider organization.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0380

Targeted Case Management Rate Methodology, Billing Criteria and Codes — Human Immunodeficiency Virus (HIV) Program

(1) Contingent on CMS approval, this rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule is to be used in conjunction with other Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and 410-138-0390 and with General Rules (chapter 410, division 120).

(3) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

(4) Providers shall only bill for allowable activities in the TCM Human Immunodeficiency Virus (HIV) program that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, educational, and other services. One or more of the activities listed below must occur in order to bill. The maximum number of 15-minute increments allowable per day is shown in parentheses:

(a) Assessment – Initial triage (maximum four 15-minute increments);

(b) Assessment – Comprehensive (maximum six 15-minute increments);

(c) Assessment – Reassessment (maximum four 15-minute increments);

(d) Development of a care plan (maximum nine 15-minute increments);

(e) Referral and related services (including follow up) (maximum six 15-minute increments);

(f) Monitoring (including follow up) (maximum three 15-minute increments).

(5) The maximum number of 15-minute units of service that can be performed and billed in any given calendar day (midnight to midnight) will be twenty four units (24 15-minute increments). The assumption is that no more than six hours would ever be provided to the same client, by the same case manager in any twenty-four-hour calendar day. Documentation must be maintained of the number of 15-minute units of service provided for each activity shown in (4) above.

(6) A unit of service can only be billed under one procedure code and one provider number:

(a) The procedure code to be used is "T1017";

(b) The provider must use diagnosis code "V08" or "042" for TCM HIV program services.

(7) Any place of service (POS) is valid.

(8) Prior authorization is not required.

(9) The Division of Medical Assistance Programs (Division) will not allow duplicate payments to other public agencies or private entities under other program authorities for TCM HIV services under the eligible client's care plan. ("Duplicate payment" is defined in 410-138-0000). The Division will recover duplicate payments.

(10) The Division may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 42-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0390

Targeted Case Management Retroactive Payments

(1) Providers may submit claims retroactively for services provided to the targeted populations described in 410-130-0020 (Babies First/Cacoon), 410-138-0300 (Human Immunodeficiency Virus, or HIV), 410-138-0500 (Substance Abusing Pregnant Women and Substance Abusing Parents With Children Under Age 18), or 410-138-0700 (Early Intervention/Early Childhood Special Education) if the claims meet the following criteria:

(a) Services were provided less than 12 months prior to the date of first claim submission, and were provided on or after the date indicated in the rules listed above, and were allowable services in accordance with 410-138-0007;

(b) The maximum number of units billed does not exceed the maximum described in the billing criteria rule appropriate for the Targeted Case Management (TCM) Program: 410-138-0080 (Babies First/CaCoon), 410-138-0380 (HIV), 410-138-0560 (Substance Abusing Pregnant Women and

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Substance Abusing Parents With Children Under Age 18), 410-138-0780 (Early Intervention/Early Childhood Special Education), or 410-138-0680 (Tribal);

(c) The case manager was appropriately licensed or certified, and met all current requirements for case managers at the time the service was provided, as described in the provider requirements rule appropriate for the TCM program: 410-138-0060 (Babies First/CaCoon), 410-138-0360 (HIV), 410-138-0540 (Substance Abusing Pregnant Women and Substance Abusing Parents With Children Under Age 18), 410-138-0760 (Early Intervention/Early Childhood Special Education), or 410-138-0660 (Tribal);

(d) Documentation regarding provider qualifications and the services that the provider retroactively claims must have been available at the time the services were performed;

(e) Providers for the HIV TCM program must be able to meet the quarterly reporting requirements described in 410-138-0360 for all quarters in which billed services were provided.

(2) For all programs listed above except the Substance Abusing Pregnant Women and Substance Abusing Parents With Children Under Age 18 program, TCM claims already paid by the Division of Medical Assistance Programs (Division) with a prior rate may not be adjusted or resubmitted for the sole purpose of receiving a different rate.

(3) Prior payment of a monthly rate for a TCM HIV program client will be considered payment in full for any case management services received by that client from any TCM HIV case manager during that month.

(4) The Division will not allow duplicate payments to be made to the same or different providers for the same service for the same client, nor will payment be allowed for services for which third parties are liable to pay (see also 410-138-0005).

(5) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0400

Targeted Case Management Asthma/Healthy Home Program

(1) This administrative rule will be implemented contingent on Centers for Medicare and Medicaid (CMS) approval for the Targeted Case Management (TCM) Asthma/Healthy Home Program. This rule is to be used in conjunction with the Division General Rules (chapter 410, division 120) and other Targeted Case Management Program rules 410-138-0000 through 410-138-0009.

(2) The TCM Asthma/Healthy Home program is a medical assistance program operated by unit of government providers. Participation by providers is voluntary and subject to approval by the Department and the Centers for Medicare and Medicaid Services. The TCM program authorized under these rules is a cost-sharing (Federal Financial Participation matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims. (See 410-138-0005 Payment for Targeted Case Management Services Eligible for Federal Financial Participation.) The TCM program rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by section 1915(g) of the Social Security Act, 42 USC (1396n)(g).

(3) The TCM Asthma/Healthy Home rules explain the Oregon Medicaid Program's policies and procedures for reimbursing TCM services. This program improves access to needed services for eligible clients with poorly controlled asthma or a history of environmentally induced respiratory distress. (See 410-138-0000 for definition of "eligible client.")

(4) TCM Asthma/Healthy Home program services include management of medical and non-medical services, which address medical, social, nutritional, educational, housing, environmental, and other needs. Home visits constitute an integral part of the delivery of TCM services, provided by a TCM Asthma/Healthy Home case manager consistent with these rules. No direct care services are authorized as part of case management activities.

(5) Provision of TCM Asthma/Healthy Home services may not restrict an eligible client's choice of providers, in accordance with 42 CFR 441.18 (a):

(a) Eligible clients must have free choice of available TCM Asthma/Healthy Home service providers or other TCM service providers

available to the eligible client, subject to the Social Security Act, 42 USC 1396n and 42CFR 441.18 (b);

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0420

Targeted Case Management Asthma/Healthy Home — Risk Criteria

(1) This administrative rule will be implemented contingent on Centers for Medicare and Medicaid (CMS) approval for the Targeted Case Management (TCM) Asthma/Healthy Home Program. This rule is to be used in conjunction with the Division General Rules (chapter 410, division 120) and other Targeted Case Management Program rules 410-138-0000 through 410-138-0009.

(2) The target group is Medicaid eligible children with poorly controlled asthma or a history of environmentally induced respiratory distress, which can result in a life threatening asthma exacerbation or exacerbation of respiratory distress.

(3) Risk factors for the target group could include, but are not limited to:

(a) Unscheduled visits for emergency or urgent care;

(b) One or more in-patient stays;

(c) History of intubation or Intensive Care Unit care;

(d) A medication ratio of control medications to rescue medications of less than or equal to .33 indicating less than desirable control of asthma;

(e) Environmental or psychosocial concerns raised by medical home;

(f) School day loss greater than two school days per year;

(g) Inability to participate in sports or other activities due to asthma;

(h) Homelessness;

(i) Inadequate housing, heating or sanitation.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0440

Targeted Case Management Asthma/Healthy Home Program — Provider Requirements

(1) This administrative rule will be implemented contingent on Centers for Medicare and Medicaid (CMS) approval for the Targeted Case Management (TCM) Asthma/Healthy Home Program. This rule is to be used in conjunction with the Division General rules (chapter 410, division 120) and other Targeted Case Management Program rules 410-138-0000 through 410-138-0009.

(2) Targeted Case Management (TCM) Asthma/Healthy Home provider organizations must be unit of government providers. The providers must demonstrate the ability to provide all core elements of case management services including:

(a) Comprehensive nursing assessment or environmental assessment;

(b) Reassessment of the client's status and needs;

(c) Comprehensive care and service plan development;

(d) Referral and linking/coordination of services;

(e) Monitoring and follow-up of services.

(3) Program providers must demonstrate the following TCM experience and capacity:

(a) Coordination and linking of community resources as required by the target population;

(b) Demonstrated and documented experience providing services for the target population;

(c) Staffing levels sufficient to meet the case management service needs of the target population;

(d) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(e) A financial management capacity and system that provides documentation of services and costs;

(f) The capacity to document and maintain individual case records in accordance with state and federal requirements, including HIPAA Privacy requirements applicable to Case Management Services, ORS 192.518–192.524, 179.505, and 411.320;

(g) A demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(h) Are enrolled as a unit of government TCM provider with the Department and meet the requirements set forth in the provider enrollment agreement.

(3) Case managers must possess the following education and qualifications:

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- (a) A current active Oregon registered nurse (RN) license; or
- (b) A registered environmental health specialist; or
- (c) An asthma educator certified by the National Asthma Education and Prevention Program; or
- (d) A community health worker certified by the Stanford Chronic Disease Self-Management Program; or
- (e) A case manager working under the supervision of a licensed registered nurse or a registered environmental specialist.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0460

Targeted Case Management Asthma/Healthy Home Program - Rate Methodology, Billing Criteria and Codes

(1) This administrative rule will be implemented contingent on Centers for Medicare and Medicaid (CMS) approval for the Targeted Case Management (TCM) Asthma/ Healthy Home Program. This rule is to be used in conjunction with the Division General Rules (chapter 410, division 120) and other Targeted Case Management Program rules 410-138-0000 through 410-138-0009.

(2) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

(3) Providers shall only bill for allowable activities in the Targeted Case Management (TCM) Asthma/Healthy Home program that assist individuals eligible under the Medicaid State plan to gain access to needed medical, social, educational, housing, environmental, and other services. One or more of the activities listed below must occur in order to bill:

- (a) Assessment – comprehensive;
- (b) Reassessment;
- (c) Development of a care plan;
- (d) Referral and related activities;
- (e) Monitoring and follow-up activities.

(4) Unit is defined as one encounter per visit. A unit consists of at least one documented contact (face to face or by telephone) with the individual (or other person acting on behalf of the individual) and any number of documented contacts with other individuals or agencies identified through the case planning process. Case management providers are paid on a unit-of-service basis that does not exceed one unit (encounter) per day per client. Documentation must be maintained for each encounter provided on each day.

(5) A unit of service can only be billed under one procedure code and one provider number:

- (a) The procedure code to be used is “T1017”;
- (b) The provider must bill using diagnosis codes 493XX or 786.2 for TCM Asthma/Healthy Home program services.
- (6) Any place of service (POS) is valid.
- (7) Prior authorization is not required.
- (8) The Division will not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client’s care plan. (“Duplicate payment” is defined in 410-138-0000). The Division will recover duplicate payments.

(9) The Division may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0500

Pregnant Substance Abusing Women and Women with Young Children Targeted Case Management Program

(1) This rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule is to be used in conjunction with other Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and 410-138-0390 and with the Division General Rules (chapter 410, division 120).

(3) The TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 Program is a medical assistance program operated by public health authorities enrolled as TCM providers with the Department of Human Services (Department). Participation by providers is voluntary and subject to approval by the Department and the Centers for Medicare and Medicaid Services. The TCM program authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM

provider as a public entity unit of government is responsible for paying the non-federal matching share of the amount of the TCM claims. (See 410-138-0005 Payment for TCM Services Eligible for Federal Financial Participation.) The TCM program rules are designed to assist the TCM provider organization in matching state and federal funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC (1396n)(g).

(4) The TCM rules for the Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 Program explain the Oregon Medicaid Program’s policies and procedures for reimbursing Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 services. This program improves access to needed medical, psychosocial, educational, and other services to Medicaid categorically eligible pregnant women or custodial parents with children under the age of eighteen who have alcohol and/or drug addiction issues. Targeted clients are those who are not yet ready to actively engage in addiction treatment services. TCM services are provided by an enrolled TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 provider consistent with these rules.

(5) TCM services include management of medical and non-medical services, which address physical, psychosocial, nutritional and other needs of this target group. The provision of TCM services by an enrolled Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 provider must be consistent with these rules. No direct care services are authorized as part of case management activities.

(6) Provision of Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 services may not restrict an eligible client’s choice of providers:

(a) Eligible clients must have free choice of available TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n;

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 19-1993, f. & cert. ef. 8-13-93; OMAP 41-1999, f. 10-15-99, cert. ef. 10-20-99;

OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08

thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10,

cert. ef. 7-1-10

410-138-0540

Provider Requirements – Pregnant Substance Abusing Women and Women with Young Children Program

(1) This rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule is to be used in conjunction with other Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and with the Division General Rules (OAR 410-120).

(3) TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 Program organizations must be public health authorities. The providers must demonstrate the ability to provide all core elements of case management services including:

- (a) Comprehensive assessment of client needs;
- (b) Reassessment of the client’s status and needs annually or more frequently with a significant change in client’s condition;
- (c) Development and periodic revision of a specific care plan;
- (d) Linking and coordination of services;
- (e) Ongoing monitoring and follow up of services.

(4) Program providers must demonstrate the following TCM experience and capacity:

- (a) Understanding and knowledge of local and state resources/services available to the target population;
- (b) Demonstrated case management experience in coordinating and linking such community resources as required by the target population;
- (c) Demonstrated experience in working with the target population;
- (d) A sufficient level of staffing to meet the case management service needs of the target population;
- (e) An administrative capacity sufficient to monitor and ensure quality of services in accordance with state and federal requirements;
- (f) The capacity to document and maintain individual case records in accordance with state and federal requirements, including HIPAA Privacy requirements applicable to case management services, ORS 192.518–192.524, 179.505, and 411.320;

(g) Enrolled as a TCM provider with the Division;

(h) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid Program;

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(i) A financial management capacity and system that provides documentation of services and costs, and provides computerized tracking and monitoring to assure adequate follow-up and avoid duplication.

(5) The targeted case manager (CM) must:

(a) Possess a combination of education and experience necessary to support case planning and monitoring. The CM will be able to demonstrate an understanding of issues relating to substance abuse and community supports;

(b) Demonstrate continuous sobriety under a nonresidential or independent living condition for the immediate past two years;

(c) Meet at least one of the following qualifications:

(A) Be a licensed Medical Provider, Qualified Mental Health Professional, or Qualified Mental Health Associate; or

(B) Possess certification as an Alcohol and Drug Counselor (CADC) level I, II, or III; or

(C) Complete a Peer Services Training Program following a curriculum approved by the Department's Addictions and Mental Health Division and be:

(i) A self-identified person currently or formerly receiving mental health services; or

(ii) A self-identified person in recovery from a substance use disorder, who meets the abstinence requirements for recovering staff in alcohol and other drug treatment programs; or

(iii) A family member of an individual who is a current or former recipient of addictions or mental health services;

(d) Work under the supervision of a Clinical Supervisor. The Clinical Supervisor must:

(A) Meet the requirements in Oregon administrative rule for alcohol and other drug treatment programs;

(B) Be certified or licensed by a health or allied provider agency to provide addiction treatment; and

(C) Possess one of the following qualifications:

(i) Five years of paid full-time experience in the field of alcohol and other drug counseling; or

(ii) A Bachelor's degree and four years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience; or

(iii) A Master's degree and three years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience;

(e) Satisfy continuing education requirements as specified by the agency providing clinical supervision specific to alcohol and other drug treatment;

(f) Work in compliance with Medicaid policies, procedures, and protocols.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 19-1993, f. & cert. ef. 8-13-93; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0560

Rate Methodology, Billing Criteria and Codes — Pregnant Substance Abusing Women and Women with Young Children

(1) This rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule is to be used in conjunction with Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and 410-138-0390, and with the Division General Rules (OAR 410-120).

(3) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

(4) Providers shall only bill for allowable activities in the TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 Program that assist individuals eligible under the Medicaid State Plan to gain access to needed medical, social, educational, and other services. Providers must demonstrate the ability to provide all core elements of case management services. One or more of the activities listed below must occur in order to bill:

(a) Comprehensive assessment of client needs;

(b) Reassessment of the client's status and needs annually or more frequently with a significant change in client's condition;

(c) Development and periodic revision of a specific care plan;

(d) Linking and coordination of services;

(e) Ongoing monitoring and follow up services.

(5) Payments will be based on 15-minute units of service with a maximum of 16 units per calendar month per eligible client. A unit of service can only be billed under one procedure code and one provider number:

(a) Providers must use procedure code "T1017" for TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 services;

(b) Providers must use diagnosis code "V6141" For TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 services.

(6) Any place of service (POS) is valid.

(7) Prior authorization is not required.

(8) The Division will not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client's care plan. ("Duplicate payment" is defined in 410-138-0000). Medical services must be provided and billed separately from Case Management services. The Department of Human Services will recover duplicate payments.

(9) The Division may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 19-1993, f. & cert. ef. 8-13-93; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0600

Targeted Case Management Federally Recognized Tribal Governments in Oregon

(1) This rule is to be used in conjunction with other Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and Division General Rules (chapter 410, division 120).

(2) The TCM Federally Recognized Tribal Government (Tribal) program is a medical assistance program operated by federally recognized tribal governments in Oregon. Participation by providers is voluntary and subject to approval by the Department of Human Services (Department) and the Centers for Medicare and Medicaid Services. The tribes wishing to participate are enrolled as TCM providers with the Department. Tribal TCM services authorized under these rules provided to Tribal members at an Indian Health Service facility operated by the Indian Health Service, by an Indian tribe or tribal organization are reimbursed at 100 percent by Title XIX (Medicaid) and Title XXI Children's Health Insurance Program (CHIP). The TCM services program rules are designed to assist the case management provider organization in providing TCM services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(3) The Tribal TCM rules explain the Oregon Medicaid program's policies and procedures for reimbursement for the TCM services provided by a federally recognized tribal government located in the State of Oregon. This program improves access to needed medical, psychosocial, educational, and other services for Medicaid categorically eligible tribal members served by tribal programs, provided by an enrolled tribal TCM provider consistent with these rules. The target group includes those members receiving elder care; individuals with diabetes; children and adults with health and social service care needs; and pregnant women. No direct care services are authorized as part of case management activities.

(4) Tribal TCM services include case management of medical and non-medical services, which address health, psychosocial, economic, nutritional, and other needs.

(5) Provision of Tribal TCM services may not restrict an eligible client's choice of providers:

(a) Eligible clients must have free choice of available Tribal TCM service providers or other TCM service providers available to the eligible client, subject to Social Security Act, 42 USC 1396n;

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0640

Federally Recognized Tribal Governments in Oregon Provider Organizations

(1) This rule is to be used in conjunction with other Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and Division General Rules (chapter 410, division 120).

(2) A Tribal TCM provider must be an organization certified as meeting the following criteria:

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(a) A minimum of three years experience of successful work with Native American children, families, and elders involving a demonstrated capacity to provide all core elements of tribal case management, including: assessment, case planning, case plan implementation, case plan coordination, and case plan reassessment;

(b) A minimum of three years case management experience in coordinating and linking community medical, social, educational or other resources as required by the target population;

(c) Administrative capacity to ensure quality of services in accordance with tribal, state, and federal requirements;

(d) Maintenance of a sufficient number of case managers to ensure access to targeted case management services;

(e) A financial management capacity and system that provides documentation of services and costs;

(f) Capacity to document and maintain client case records in accordance with state and federal requirements, including requirements for recordkeeping in OAR 410-138-0007 and 410-120-1360; confidentiality requirements in ORS 192.519–192.524, 179.505, and 411.320; and HIPAA privacy requirements in 45 CFR 160 and 164, if applicable;

(g) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program;

(h) Evidence that the TCM organization is a federally recognized tribe located in the State of Oregon;

(i) Enrollment as a TCM provider with the Division.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0660

Targeted Case Management Federally Recognized Tribal Governments — Qualifications of Case Managers within Provider Organizations

(1) This rule is to be used in conjunction with other Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and the Division General Rule (chapter 410, division 120).

(2) The following are qualifications of Case Managers within provider organizations:

(a) Completion of training in a case management curriculum;

(b) Basic knowledge of behavior management techniques, family dynamics, child development, family counseling techniques, emotional and behavioral disorders, and issues around aging;

(c) Skill in interviewing to gather data and complete needs assessment, in preparation of narratives/reports, in development of service plans, and in individual and group communication;

(d) Ability to learn and work with state, federal and tribal rules, laws and guidelines relating to Native American child, adult and elder welfare and to gain knowledge about community resources and link tribal members with those resources;

(e) Knowledge and understanding of these rules and the applicable State Medicaid Plan Amendment.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0700

Targeted Case Management Early Intervention/Early Childhood Special Education Program

(1) Contingent on CMS approval, this rule is in effect for services rendered retroactive to July 1, 2009.

(2) This rule is to be used in conjunction with the Division General Rules Program (chapter 410, division 120) and the Targeted Case Management (TCM) rules 410-138-0000 through 410-138-0009.

(3) The TCM services rules are designed to assist the TCM Early Intervention/Early Childhood Special Education (EI/ECSE) provider organization in matching state and federal funds for TCM services defined by section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(4) The TCM EI/ECSE program is a medical assistance program provided by enrolled TCM EI/ECSE providers that meet the criteria approved by the State Superintendent of Public Instruction to administer the provision of EI and ECSE. This qualifies such programs for state reimbursement under EI/ECSE programs (OAR 581-015-2700 through OAR 581-015-2910).

(5) An enrolled TCM EI/ECSE provider must be a contractor/agency designated by the Oregon Department of Education to administer the provision of EI and ECSE within selected service areas or be a sub-contractor

with such a contractor. (6) Participation by providers is voluntary and subject to approval by the Division and the Centers for Medicare and Medicaid Services.

(7) TCM EI/ECSE services authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the enrolled TCM EI/ECSE provider as a public entity, unit of government, is responsible for paying the non-Federal matching share of the amount of the TCM claims. (See 410-138-0005).

(8) The rules of the TCM EI/ECSE program explain the Oregon Medicaid Program for reimbursing case management services available to Medicaid-eligible preschool children with disabilities, receiving EI/ECSE services from birth until they are eligible for public school. These services are available on a fee-for-service basis, within the limitations established by the Medical Assistance Program and the chapter 410, division 138 rules, consistent with the requirements of the Individuals with Disabilities Education Act (IDEA).

(9) TCM EI/ECSE program services include management of medical and non-medical services, to address an eligible child's medical, social, educational, and other service needs (such as housing or transportation) in coordination with a child's Individualized Family Service Plan (IFSP), based on information collected through the TCM assessment or periodic reassessment process. No direct services are authorized as part of case management activities.

(10) Provision of TCM EI/ECSE services may not restrict an eligible client's choice of providers.

(a) Eligible clients must have free choice of available TCM EI/ECSE service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n(g).

(b) Eligible clients must have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0710

Targeted Case Management Group — Early Intervention/Early Childhood Special Education

(1) Contingent on CMS approval, this rule is in effect for services rendered retroactive to July 1, 2009.

(2) The Targeted Case Management (TCM) Program Early Intervention/Early Childhood Special Education (EI/ECSE) rules described in 410-138-0700 through 410-138-0780 in conjunction with TCM rules 410-138-0000 through 410-138-0009 apply to services provided to the population of Medicaid eligible children who are preschool children with disabilities, birth until three years of age who are eligible for EI services under OAR 581-015-2780(3) or three years of age to eligibility for public school who are eligible for ECSE services under OAR 581-015-2795. For the purpose of these rules, children in this target group shall be referred to as "eligible children."

(3) An Oregon Health Plan (OHP) Medicaid-eligible child means a child who has been determined to be eligible for Medicaid or the Children's Health Insurance Program (CHIP) by the Division.

Stat. Auth.: 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0740

Provider Organizations — Early Intervention/Early Childhood Special Education Targeted Case Management

(1) Contingent on CMS approval, this rule is in effect for services rendered retroactive to July 1, 2009.

(2) For licensing and education requirements for case managers/service coordinators see 410-138-0760 Provider Requirements Targeted Case Management (TCM) Program EI/ECSE in these rules.

(3) Qualifications for TCM Early Intervention/Early Childhood Special Education (EI/ECSE) provider organizations are as follows:

(a) TCM EI/ECSE providers must meet the criteria to administer the provision of EI and ECSE within selected service areas designated by the Oregon Department of Education, qualifying such programs for state reimbursement under EI/ECSE Programs (OAR 581-015-2700 through 581-015-2910); and

(b) Must be contractors with the Oregon Department of Education in the provision of EI/ECSE services or sub-contractors with such a contractor, and must meet the following qualifications:

ADMINISTRATIVE RULES

(A) Demonstrated capacity (including sufficient number of staff that meet the personnel standards requirements in OAR 581-015-2900 to provide TCM EI/ECSE services;

(B) Demonstrated case management experience in conjunction with service coordination under OAR 581-015-2840 specified on a child's Individualized Family Service Plan (IFSP) for coordinating and linking such community resources as required by the target population;

(C) Demonstrated experience with the target population;

(D) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(E) A financial management capacity and system that provides documentation of services and costs;

(F) Capacity to document and maintain individual case records in accordance with state and federal requirements, including requirements for recordkeeping in OAR 410-120-1360, and confidentiality requirements in the Individuals with Disabilities Education Act, ORS 192.518–192.524, 179.505 and 411.320, and HIPAA Privacy requirements in 45 CFR 160 and 164, if applicable;

(G) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program.

(4) In addition to the qualification requirements in subsection (2) of this rule, the TCM EI/ECSE provider must be enrolled as a TCM EI/ECSE provider with the Division of Medical Assistance Programs.

(5) The TCM EI/ECSE provider must either be a governmental entity or a subcontractor of a government entity:

(a) The TCM EI/ECSE provider public entity unit of government is solely responsible for providing the EI/ECSE TCM provider's share from public funds for purposes of OAR 410-138-0005 of this rule;

(b) If the TCM EI/ECSE provider is a subcontractor of a governmental entity, the governmental entity is responsible to make the public fund payments in compliance with OAR 410-138-0005.

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0760

Provider Requirements — Targeted Case Management Early Intervention/Early Childhood Special Education

(1) Contingent on CMS approval, this rule is in effect for services rendered retroactive to July 1, 2009.

(2) Qualifications for Supervising Case Managers of Service Coordinators:

(a) Must be employees of the Education Service District (ESD) contracting agency or the Early Intervention/Early Childhood Special Education (EI/ECSE) subcontracting agency (see 410-138-0740 Provider Organizations – Targeted Case Management (TCM) Program EI/ECSE in these rules);

(b) Must possess a minimum of a master's degree in early childhood special education or a related field; and

(c) Must have three years experience with infants, toddlers, young children, and families.

(3) Qualifications for TCM EI/ECSE Case Managers/Service Coordinators:

(a) Must be employees of the EI/ECSE contracting or subcontracting agency and meet the personnel standards requirements in OAR 581-015-2900;

(b) Must possess a minimum of a baccalaureate degree in early childhood special education or a related field; or

(c) Must possess a minimum of a baccalaureate degree and a valid license necessary to practice in Oregon, including Teacher Standard and Practices Commission (TSPC) licensure in their area of discipline; or

(d) Must possess current state licensure in their area of discipline; and

(e) Must have at least three years experience with infants, toddlers, young children and families;

(f) Must have demonstrated knowledge and understanding about:

(A) The Oregon Department of Education EI/ECSE programs OAR 581-015-2700 through 581-015-2910, including these rules and the applicable State Medicaid Plan Amendment;

(B) Case Management experience in conjunction with service coordination under OAR 581-015-2840 specified on a child's Individualized Family Service Plan (IFSP) for coordinating and linking such community resources as required by the target population to assist clients in gaining access to needed medical, social, educational, developmental or other services;

(C) The Individuals with Disabilities Education Act (IDEA);

(D) The nature and scope of services available under the Oregon EI/ECSE program, including the TCM services, and the system of payments for services and other pertinent information.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

410-138-0780

Cost Rate Methodology, Billing Criteria and Codes for Targeted Case Management Early Intervention/Early Childhood Special Education

(1) Contingent on the Centers for Medicare and Medicaid Services (CMS) approval, providers may submit claims retroactively for services provided to the targeted population on or after July 1, 2009, if they meet the criteria described below.

(2) This rule is to be used in conjunction with the Division General Rules (OAR 410-120) and other Targeted Case Management (TCM) Program rules 410-138-0000 through 410-138-0009 and 410-138-0390.

(3) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

(4) Cost-based rate methodology:

(a) The cost-based rate developed for TCM EI/ECSE is based on the Education Service District (ESD) contractor's or EI/ECSE subcontractor's prior year audited costs reported to the Oregon Department of Education (ODE) annually;

(b) The ESD contractor or EI/ECSE subcontractor must obtain cost sheets and instructions from the Division to be used for determining their TCM EI/ECSE costs for activities related exclusively to the provision of service coordination/targeted case management EI/ECSE services. These cost sheets must be submitted to the Division for review and acceptance;

(c) The Division's acceptance of cost data provided by provider organizations for the purpose of establishing rates paid for TCM services does not imply or validate the accuracy of the cost data provided;

(d) The ESD contractor or EI/ECSE subcontractor targeted case management cost based rate will be derived by considering the following expenditures directly attributable to TCM EI/ECSE Staff:

(A) TCM staff salaries and other personnel expenses;

(B) Supervisory salaries and other personnel expenses;

(C) Administrative support salaries and other personnel expenses;

(D) Services and supply expenses;

(E) Various overhead expenditures, if not already considered in the Oregon Department of Education indirect rate;

(e) The ESD contractor or EI/ECSE subcontractor's established Division reviewed and accepted hourly cost based rate divided by 60 yields a per minute cost amount;

(f) The per minute cost amount multiplied by the actual number of minutes for services provided can be calculated as a daily or a weekly amount and results in the ESD contractors or EI/ECSE subcontractors billing Medicaid no more than their cost to provide these services;

(g) As the above methodology utilizes cost based rates which are based on prior year audited costs, there will not be any need for reconciliation nor an annual cost settlement required for payment made for TCM services provided by each ESD contractor or EI/ECSE subcontractor;

(h) If the ESD contractor or EI/ECSE subcontractor does not have a full prior year cost to establish a TCM cost based rate, an estimate can be established based on the lesser of budgeted costs for the current year or an estimate of actual costs expended during the current year which prorates cost to the end of that year. However, the Division will not require that a cost reconciliation be completed at the end of the year for ESD contractor or EI/ECSE subcontractor cost based rates.

(5) Billing criteria for this program are as follows:

(a) Providers can only bill for allowable activities in the TCM EI/ECSE program provided in conjunction with a Medicaid eligible child's Individualized Family Service Plan (IFSP) assisting Medicaid eligible preschool children with disabilities, from birth until they are eligible for public school, to gain access to needed medical, social, educational, and other services, such as housing or transportation;

(b) These children must be eligible for EI/ECSE services under the IDEA and eligible for TCM EI/ECSE services as defined in the Medicaid State plan, at the time the services are furnished;

(c) One or more of the activities listed below must occur in order to bill:

(A) Assessment;

(B) Development of a care plan;

(C) Referral (including follow-up);

ADMINISTRATIVE RULES

2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10

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**Department of Human Services,
Public Health Division
Chapter 333**

Rule Caption: Caregiver Registry Licensing Program.

Adm. Order No.: PH 9-2010

Filed with Sec. of State: 6-17-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 4-1-2010

Rules Adopted: 333-540-0005, 333-540-0010, 333-540-0015, 333-540-0020, 333-540-0025, 333-540-0030, 333-540-0035, 333-540-0040, 333-540-0045, 333-540-0050, 333-540-0055, 333-540-0060, 333-540-0065, 333-540-0070, 333-540-0075, 333-540-0080, 333-540-0085, 333-540-0090

Subject: The Department of Human Services, Public Health Division is permanently adopting Oregon Administrative Rules relating to the establishment of standards for the operation and licensing of caregiver registries in response to the passage of SB 158 during the 2009 legislative session. These rules will provide a process for licensing, handling complaints, investigations of complaints, surveys, and discipline for caregiver registries by assessing a civil penalty.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-540-0005

Purpose and Scope

(1) These rules establish minimum standards for the operation and licensure of caregiver registries.

(2) A caregiver registry may provide services in addition to establishing and maintaining a list of qualified private contractor caregivers, but these rules do not govern those additional services.

(3) A caregiver registry may be subject to additional licensure requirements if it qualifies as an in-home care agency, home health agency, or referral agency as defined in ORS 443.005 and ORS 443.305.

(4) A caregiver registry may not employ or compensate, directly or indirectly, caregivers placed on its list, schedule caregivers although they may maintain calendars that track caregiver availability and for referral fee purposes, assign a caregiver to a client, define working conditions, or negotiate for a caregiver or client for the provision of services.

Stat. Auth.: ORS 443.105

Stats. Implemented: ORS 443.105

Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0010

Definitions

As used in this division, the following definitions apply:

(1) "Abuse":

(a) As it applies to an adult, includes but is not limited to:

(A) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(B) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(C) Abandonment, including desertion or willful forsaking of a person or the withdrawal or neglect of duties and obligations owed a person.

(D) Willful infliction of physical pain or injury.

(E) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to threaten significant physical or emotional harm to a person.

(F) Wrongfully taking or appropriating money or property, of knowingly subjecting a person to harm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the person to believe that the threat will be carried out.

(G) Sexual contact with a non-consenting person or with a person considered incapable of consenting to a sexual act as described in ORS 163.315. As used in this paragraph, "sexual contact" has the meaning given that term in ORS 163.305.

(b) As it applies to a child, has the same meaning as "abuse" as that term is defined in ORS 419B.005.

(2) "Activities of daily living" means activities related to personal care and include but are not limited to bathing or showering and personal hygiene, dressing and grooming, mobility including walking and transferring, elimination, and eating.

(D) Monitoring (including follow up).

(6) TCM EI/ECSE services can only be billed under one provider number and one procedure code that must be accompanied by a two digit modifier:

(a) TCM EI/ECSE providers must use procedure code "T1017" Targeted Case Management and include the "TL" modifier identifying TCM EI/ECSE services provided in conjunction with the eligible child's IFSP. The billing for procedure code T1017 is once daily per eligible client;

(b) TCM EI/ECSE providers must use diagnosis code "V62.3" Educational Circumstances.

(7) Two digit Place of Service (POS) code is 03 indicating a facility whose primary purpose is education.

(8) Prior authorization is not required.

(9) TCM EI/ECSE providers must bill at a cost rate no greater than the education agency's established cost rate for service coordination/case management reviewed and accepted by the Division based on the cost rate methodology above described in these rules.

(10) Services must be billed on a CMS-1500 or by electronic media claims (EMC) submission using only those procedure codes specified for the TCM EI/ECSE program. If the TCM EI/ECSE provider submits their claims electronically, they must become a trading partner with the Division and comply with the requirements for Electronic Data Interchange (EDI) pursuant to OAR 407-120-0100 through 407-120-0200 and 410-001-0000 et seq.

(11) The Division will accept a claim up to 12 months from the date of service. See Department-wide Support Services (DWSS) provider rules 407-120-0340 Claim and PHP Encounter Submission and General Rules 410-120-1300 Timely Submission of Claims.

(12) Third party liability. In general, the Medicaid program is the payer of last resort and a provider is required to bill other resources before submitting the claim to Medicaid. This requirement means that other payment sources, including other federal or state funding sources, must be used first before the Division can be billed for covered TCM services. However, the following exceptions apply to the requirement to pursue third party resources:

(a) For TCM EI/ECSE services provided under the Individuals with Disabilities Education Act (IDEA), 1903(c) of the Social Security Act and 34CFR300.154 Methods of Ensuring Services make Medicaid/SCHIP primary payer before Oregon Department of Education (ODE) or the Educational Agency (EA), for a covered TCM EI/ECSE service provided to a Medicaid-eligible child receiving Service Coordination/Case Management pursuant to the Medicaid-eligible child's IFSP, the services are documented as required under the TCM rules, and subject to the applicable reimbursement rate;

(b) If TCM EI/ECSE services are provided under Title V of the Social Security Act Maternal and Child Health Services Block Grant, Medicaid-covered TCM services provided by a Title V grantee are paid by Medicaid before the Title V funds;

(c) The Centers for Medicare and Medicaid Services (CMS) recognize that while public education agencies are legally liable to provide IDEA services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903(c) of the Social Security Act requires Medicaid to be primary to the U.S. Department of Education for payment of covered services that may also be considered special education, related services, or early intervention services, or services provided under IDEA.

(13) The Division will not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client's care plan. ("Duplicate payment" is defined in 410-138-0000). The Division will recover duplicate payments.

(14) The Division may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act federal or state funded parole and probation, or juvenile justice programs. These services must be billed separately.

(15) TCM EI/ECSE activities authorized under these rules is a cost-sharing (Federal Financial Participation matching) program in which the TCM provider as a public entity, unit of government, is responsible for paying the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage rates in effect during the quarter when the TCM claims will be paid (See 410-138-0005 Payment for Targeted Case Management Services Eligible for Federal Financial Participation).

Stat. Auth.: ORS 409.050 & 414.065

Stats. Implemented: ORS 414.065

Hist.: OMAP 2-2006(Temp), f. & cert. ef. 2-7-06 thru 7-1-06; OMAP 21-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-

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(3) "Caregiver" means a person on a caregiver registry list that may be hired directly by a client or client representative to provide caregiver services to a client within the client's place of residence.

(4) "Caregiver registry" or "Registry" means an agency that prequalifies, establishes and maintains a list of qualified private contractor caregivers that is provided to a client for caregiver services within the client's place of residence.

(5) "Caregiver services" means providing assistance with the activities of daily living and can include more skilled services such as medication reminders, medication assistance, or medication administration or nursing services if the caregiver has the necessary licensure, certification, skills, education, or training to safely provide the skilled services.

(6) "Client" means an individual to whom caregiver services are provided.

(7) "Client representative" means an individual, paid or unpaid, related or unrelated, who acts on behalf of the client when the client is an adult.

(8) "Division" means the Department of Human Services, Oregon Public Health Division.

(9) "Parent agency" means a caregiver registry that develops and maintains administrative controls of subunits.

(10) "Satisfactory reference" means a positive, verifiable reference, either verbal or written, from a former employer or other person not related to the individual that affirms the ability of the individual to provide caregiver services.

(11) "Subunit" means a caregiver registry that provides services for a parent agency in a geographic area different from that of the parent agency and generally exceeding one hour of travel time from the location of the parent agency.

(12) "Survey" means an inspection of a caregiver registry to determine the extent to which the registry is in compliance with laws applicable to caregiver registries, including this division.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.005 & 443.105
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0015

Application for Caregiver Registry License; Renewal

(1) A person may not establish, conduct or maintain a caregiver registry, or represent to the public that the person is a caregiver registry, without first obtaining a caregiver registry license from the Division.

(2) A person shall apply for a license on a form prescribed by the Division and shall include:

(a) The applicable fee, including fees for subunits, as applicable; and
(b) Forms and fingerprints if requested by the Division, to enable the Division to conduct a criminal background check on the owner and manager of the caregiver registry and any subunits.

(3) The Division shall review the application, verify compliance with these rules, and conduct an on-site inspection prior to granting or denying a license.

(4) The Division shall notify an applicant in writing if a license application is approved, and shall include the license that shall be posted in a conspicuous place.

(5) Each license shall be issued only for the caregiver registry or subunit named in the application and shall not be transferable or assignable. If the ownership of the caregiver registry changes, the new owner shall apply for a license.

(6) If the Division intends to deny a license application, it shall issue a Notice of Proposed Denial of License Application in accordance with ORS 183.411 through 183.470.

(7) An owner or manager's criminal history that reasonably raises questions about that person's ability to appropriately operate or manage a caregiver registry may be grounds for denial of an application.

(8) The Division may deny a license application or renewal application if an applicant fails to comply with these rules.

(9) No entity shall provide caregiver registry services or use the term "caregiver registry" in its advertising, publicity, or any other form of communication unless it holds a current valid license as a caregiver registry in accordance with these rules.

(10) If any of the information in a caregiver registry's most recent application changes at a time other than the annual renewal date, the caregiver registry shall notify the Division in writing within 60 days of the change.

(11) A caregiver registry license shall be renewed annually. Each licensee shall submit:

(a) A renewal application form prescribed by the Division within 60 days of the license expiring;

(b) The applicable fees; and

(c) Forms and fingerprints if requested by the Division, to enable the Division to conduct a criminal background check on the owner and manager of the caregiver registry and any subunits.

(12) The Division shall notify an applicant in writing if a license renewal application is approved, and shall include the license that shall be posted in a conspicuous place.

(13) If the Division intends to deny a license renewal application, it shall issue a Notice of Proposed Denial of License Application in accordance with ORS 183.411 through 183.470.

(14) An owner or manager's criminal history that reasonably raises questions about that person's ability to appropriately operate or manage a caregiver registry may be grounds for denial of an application.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.035, 443.045 & 443.100
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0020

Licensure Fees

(1) The fee for a new caregiver registry license is \$1,500, plus an additional \$750 for each subunit.

(2) The fee for renewal of a caregiver registry license is \$750, plus \$750 for each additional subunit.

(3) If the ownership of a caregiver registry changes at a time other than the annual renewal date, the new owner's caregiver registry licensure fee shall be \$350, plus \$350 for each additional subunit.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.035
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0025

Caregiver Registry Organization, Administration, and Personnel

(1) A caregiver registry shall have written policies and procedures that include but are not limited to:

(a) The organization of the Registry;

(b) Services provided by the Registry;

(c) The relationship between the caregiver registry and caregivers placed on the registry;

(d) Fees charged to caregivers and clients;

(e) Selection of caregivers for placement on the registry and for removal from the registry;

(f) A process for ensuring that a caregiver has satisfied basic competency requirements and has the necessary education, skills and training to provide the level of care the caregiver proposes to offer to clients;

(g) Procedures for conducting criminal background checks on caregivers, including a description of criminal convictions that disqualifies a caregiver from being placed on the registry, in accordance with OAR 333-540-0035;

(h) A process for dealing with a complaint from a client, a member of a client's family, or a client's representative, about a caregiver or the caregiver registry;

(i) A process for reporting suspected abuse or neglect of a client to the Division and other appropriate agencies; and

(j) Record keeping, including physical security of documents and record confidentiality.

(2) A caregiver registry shall provide each caregiver who meets the requirements for placement on the registry with an orientation that includes, but is not limited to, the following:

(a) Review of the registry's policies and procedures;

(b) Requirements for placement on the registry;

(c) Requirements for continuation of caregivers' names on the registry;

(d) Reasons for removal from the registry;

(e) Requirements for reporting abuse and/or neglect; and

(f) Continuing education requirements.

(3) A caregiver registry shall require caregivers placed on the registry to report, within 10 days, any:

(a) Criminal conviction;

(b) Arrest, indictment, or charge for a sexual offense or property crime;

(c) Disciplinary action taken by a licensing board or agency;

(d) Citation for driving while under the influence of intoxicants; and

(e) Revocation of driving privileges.

(4) A caregiver registry shall not delegate any administrative functions to another agency or organization.

(5) A caregiver registry's owner or designee shall:

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(a) Assume full legal, financial, and overall responsibility for the caregiver registry's operation; and

(b) Serve as or employ a qualified manager.

(6) A manager of a caregiver registry hired on or after July 1, 2010 shall have:

(a) A high school diploma or equivalent; and

(b) At least two years of professional or management experience.

(7) A caregiver registry manager shall designate, in writing, a qualified individual to act as manager in his or her absence.

(8) A caregiver registry manager or designee shall be responsible for:

(a) Organizing and directing the caregiver registry's ongoing functions;

(b) Developing and implementing written and current policies and procedures necessary to direct the administrative operations of the caregiver registry, including but not limited to the requirements in these rules;

(c) Ensuring the completeness and accuracy of all information provided to the public regarding the caregiver registry and its services;

(d) Ensuring that all caregivers on the registry meet the qualifications required by these rules and the caregiver registry policies;

(e) Cooperating with the Division in the event of a survey or investigation; and

(f) Ensuring the timely reporting of allegations of abuse or neglect to the appropriate authority that includes but is not limited to the Division or local law enforcement agency.

Stat. Auth.: ORS 443.105

Stats. Implemented: ORS 443.105

Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0030

Requirements for Placement on Caregiver Registry; Continuing Education

(1) In order to be placed on a caregiver registry a caregiver must be at least 18 years of age and have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients and registry staff.

(2) A caregiver registry shall, prior to placing a caregiver on its registry:

(a) Conduct a criminal background check in accordance with OAR 333-540-0035;

(b) Verify the caregiver's licensure status, if applicable, with the appropriate licensing agency;

(c) Conduct a face-to-face interview with the individual;

(d) Obtain at least two satisfactory references for the individual that the individual has worked for within the past five years; and

(e) Ensure that the caregiver has satisfied basic competency requirements and has the necessary education, skills and training to provide the level of care the caregiver proposes to offer to clients.

(3) A caregiver placed on a registry shall annually complete three hours of continuing education on topics related to the caregiver services the caregiver offers to clients.

Stat. Auth.: ORS 443.105

Stats. Implemented: ORS 443.105

Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0035

Criminal Background Checks

(1) A caregiver registry shall, prior to placing a caregiver on its registry, conduct or arrange for a criminal background check through the Oregon state police or a private vendor.

(2) If the criminal background check or other information obtained by a caregiver registry indicates a caregiver has been convicted of a crime against a person or property that reasonably raises questions about the ability of that caregiver to safely provide caregiver services, the caregiver registry shall notify the individual in writing that they have been found unfit to be placed on the registry.

(3) A caregiver registry shall keep the information obtained from criminal background checks confidential and use it solely to determine a caregiver's eligibility to be placed on the registry.

(4) A caregiver registry shall perform a criminal background check on a caregiver placed on the registry every three years.

Stat. Auth.: ORS 443.105

Stats. Implemented: ORS 443.105

Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0040

Caregiver Registry Records

(1) A caregiver registry shall:

(a) Keep records for each caregiver placed on the registry including, but not limited to:

(A) Documentation of the required criminal background check;

(B) Documentation of satisfactory references;

(C) Documentation that the caregiver has satisfied basic competency requirements and has the necessary education, skill and training to provide the services proposed to be offered to clients;

(D) Documentation that the caregiver received the caregiver registry's orientation;

(E) Documentation of continuing education;

(F) Documentation of licensure status, if applicable;

(G) A copy of picture identification; and

(H) Upon acceptance to the registry, and every three years afterwards, proof of current driver's license and auto insurance for any caregiver who provides transportation services for clients.

(b) Maintain a record of clients served by caregivers on the registry, including but not limited to the client's name, contact information, and address.

(c) Maintain client records in a manner that makes them easily retrievable.

(d) Maintain records of any complaints received and documentation of any investigation conducted by the Division or other investigative body, including any action taken and any corrective action required.

(e) Keep caregiver and client records for at least seven years from the date a caregiver is terminated with the caregiver registry.

(2) Documents kept in registry files, including but not limited to background checks, reference checks, verification of basic competency and skill requirements, and training certificates must be legible and dated, signed, or otherwise authenticated by the administrator or the administrator's designee.

(3) If a caregiver registry changes ownership, all records shall remain in the registry, and it shall be the responsibility of the new owner to protect and maintain these records for at least seven years from the date a caregiver is terminated with the caregiver registry.

(4) Before a registry terminates its business, the registry shall notify the Division where the records will be stored.

(5) Caregiver registry records shall be maintained in a secure manner that protects the confidentiality of the records, and protects the records from destruction or theft.

Stat. Auth.: ORS 443.105

Stats. Implemented: ORS 443.105

Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0045

Caregiver Registry Disclosure Statements

(1) A caregiver registry shall provide a disclosure statement to:

(a) A caregiver, prior to placing a caregiver on the registry; and

(b) To a client who intends to hire a caregiver from the caregiver registry, as soon as a caregiver registry is notified that a caregiver may be hired.

(2) Both the caregiver and client disclosure statements must state: "The client or the client's representative is responsible for selecting, interviewing, hiring, scheduling, and supervising the work of the caregivers."

(3) In addition to section (2) of this rule, a caregiver registry disclosure statement provided to a caregiver shall include, but is not limited to:

(a) Information on the services offered by the caregiver registry;

(b) Fees charged to a caregiver, if applicable;

(c) Insurance and bonding requirements, if applicable;

(d) Criminal background checks and disqualifying convictions;

(e) Information on the orientation process; and

(f) Information on the process for verifying the competency, education, skills and training of a caregiver.

(4) In addition to section (2) of this rule, a disclosure statement provided to a client shall include but is not limited to:

(a) The extent to which the client may be responsible for payroll taxes, wage and hour claims, and any other employment related costs;

(b) Fees charged by a caregiver registry to a client, if any, and that 30 days notice is required before any fee increases or changes in billing or payment procedures;

(c) Whether a caregiver has liability insurance and/or is bonded;

(d) Services that may be offered by a caregiver;

(e) The extent to which the registry verifies that a caregiver has a current driver's license and auto insurance if those services are provided;

(f) The process the caregiver registry uses to ensure that a caregiver meets basic competency requirements and has the necessary training, education and skills to provide the caregiver services offered by a caregiver to a client;

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- (g) The process for placing a caregiver on a caregiver registry;
- (h) A description of the criminal background checks required for a caregiver;
- (i) How to file complaints about the caregiver registry or a caregiver to the caregiver registry and the Division, including reports of abuse or neglect; and

(j) A description of client rights including but not limited to:

- (A) The right to be treated with dignity and respect;
- (B) The right to be free from theft, damage, or misuse of one's personal property;
- (C) The right to be given the informed choice and opportunity to select or refuse service and to accept responsibility for the consequences;
- (D) The right to be free from neglect and from verbal, mental, emotional, physical and sexual abuse;
- (E) The right to be free from financial exploitation;
- (F) The right to be free from physical and chemical restraints;
- (G) The right to voice grievances or complaints regarding services or any other issue without discrimination or reprisal for exercising such rights;
- (H) The right to be free from discrimination in regard to race, color, national origin, gender, sexual orientation, or religion; and
- (I) The right to participate in planning of the services to be provided by a caregiver and care to be furnished, any changes in the services and care, the frequency of visits, and cessation of services, except where the health and safety of the caregiver is at risk.

(5) A caregiver registry shall document that a copy of the disclosure statement was given to the caregiver, client or client's representative and shall place this documentation in a caregiver's file and in the caregiver registry's records.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.105
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0050

Complaints

(1) Any person may make a complaint verbally or in writing to the Division regarding an allegation against a caregiver registry of a violation of law applicable to a caregiver registry.

(2) The identity of a person making a complaint will be kept confidential.

(3) An investigation will be carried out as soon as practicable after the receipt of a complaint.

(4) Information obtained by the Division during an investigation of a complaint or reported violation under this rule is confidential and not subject to public disclosure under ORS 192.410 through 192.505.

(5) Upon the conclusion of the investigation, the Division may publicly release a report of its findings but may not include information in the report that could be used to identify the complainant or any client of the caregiver registry. The Division may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of a caregiver registry.

(6) If the complaint involves an allegation of criminal conduct or an allegation that is within the jurisdiction of another local, state, or federal agency, the Division will refer the matter to that agency.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.105
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0055

Investigations

(1) As soon as practicable after receiving a complaint, taking into consideration the nature of the complaint, Division staff will begin an investigation.

(2) A caregiver registry shall permit Division staff access to the caregiver registry place of business during an investigation.

(3) An investigation may include but is not limited to:

(a) Interviews of the complainant, caregivers, clients, a client's representative, a client's family members, witnesses, caregiver registry management and staff;

(b) On-site observations of caregiver registry management, staff, or caregivers; and

(c) Review of documents and records.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.105
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0060

Surveys

(1) The Division shall, in addition to any investigations conducted under OAR 333-540-0055, conduct at least one general survey of each caregiver registry to determine compliance with caregiver registry laws every three years and at such other times as the Division deems necessary.

(2) A caregiver registry shall permit Division staff access to the caregiver registry place of business during a survey.

(3) A survey may include but is not limited to:

(a) Interviews of caregivers, clients, client representatives, client family members, and caregiver registry management and staff;

(b) On-site observations of caregiver registry management, staff, or caregivers; and

(c) Review of documents and records.

(4) A caregiver registry shall make all requested documents and records available to the surveyor for review and copying.

(5) Following a survey, Division staff may conduct an exit conference with the caregiver registry owner or his or her designee. During the exit conference Division staff shall:

(a) Inform the caregiver registry representative of the preliminary findings of the inspection; and

(b) Give the person a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings.

(6) Following the survey, Division staff shall prepare and provide the caregiver registry owner or his or her designee specific and timely written notice of the findings.

(7) If the findings result in a referral to another regulatory agency, Division staff shall submit the applicable information to that referral agency for its review and determination of appropriate action.

(8) If no deficiencies are found during a survey, the Division shall issue written findings to the caregiver registry owner or designee indicating that fact.

(9) If the surveyor's written notice of findings indicates that the caregiver registry was in compliance with caregiver registry laws and no deficiencies were cited, the caregiver registry's owner or designee shall sign and date the written notice and return it to the Division.

(10) If deficiencies are found, the Division shall take informal or formal enforcement action in compliance with OAR 333-540-0070 or 333-540-0075.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.019 & 443.105
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0065

Violations

In addition to non-compliance with any law that governs a caregiver registry, it is a violation to:

(1) Refuse to cooperate with an investigation or survey, including but not limited to failure to permit Division staff access to the caregiver registry place of business, its documents or records;

(2) Fail to implement an approved plan of correction;

(3) Refuse or fail to comply with an order issued by the Division;

(4) Refuse or fail to pay a civil penalty;

(5) Fail to comply with rules governing the storage of records following the closure of a caregiver registry;

(6) Fail to report suspected abuse of elderly persons as defined in ORS 124.050;

(7) Fail to return a license as provided in OAR 333-540-0085; or

(8) Operate without a license.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.105
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0070

Informal Enforcement

(1) If, during an investigation or survey Division staff document violations of a law governing a caregiver registry, the Division may issue a statement of deficiencies that cites the law alleged to have been violated and the facts supporting the allegation.

(2) A signed and dated plan of correction must be received by the Division within 10 business days from the date the statement of deficiencies was mailed to the caregiver registry. A signed plan of correction will not be used by the Division as an admission of the violations alleged in the statement of deficiencies.

(3) A caregiver registry shall correct all deficiencies within 60 days from the date of the exit conference, unless an extension of time is request-

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ed from the Division. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(4) The Division shall determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Division, the Division shall notify the owner of the caregiver registry, in writing or by telephone:

- (a) Identifying which provisions in the plan the Division finds unacceptable;
- (b) Citing the reasons the Division finds them unacceptable; and
- (c) Requesting that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was mailed to the owner.

(5) If the caregiver registry does not come into compliance by the date of correction reflected on the plan of correction or 60 days from date of the exit conference, whichever is sooner, the Division may propose to deny, suspend, or revoke the caregiver registry's license, or impose civil penalties.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.045 & 443.105
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0075

Formal Enforcement

(1) If, during an investigation or survey, Division staff document a failure to comply with caregiver registry laws, the Division may issue a Notice of Proposed Suspension or Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470.

(2) The Division may issue a Notice of Imposition of Civil Penalty for violations of caregiver registry laws.

(3) At any time the Division may issue a Notice of Emergency License Suspension under ORS 183.430(2).

(4) If the Division revokes a caregiver registry license, the order shall specify when, if ever, the caregiver registry may reapply for a license.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.045 & 443.105
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0080

Civil Penalties

(1) A caregiver registry that violates caregiver registry laws, including OAR 333-540-0065 (violations), is subject to the imposition of a civil penalty not to exceed \$1,000 per violation and may not total more than \$2,000.

(2) In determining the amount of a civil penalty, the Division shall consider whether:

- (a) The Division made repeated attempts to obtain compliance;
- (b) The licensee has a history of noncompliance with caregiver registry laws;
- (c) The violation poses a serious risk to the public's health;
- (d) The licensee gained financially from the noncompliance; and
- (e) There are mitigating factors, such as a licensee's cooperation with an investigation or actions to come into compliance.

(3) The Division shall document its consideration of the factors in section (2) of this rule.

(4) Each day a violation continues is an additional violation.

(5) A civil penalty imposed under this rule shall comply with ORS 183.745.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.045
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0085

Return of Agency License

A caregiver registry shall return its license to the Division immediately if the registry:

- (1) Voluntarily decides to stop operating a registry;
- (2) Has its license suspended or revoked; or
- (3) Fails to renew its license.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.045
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

333-540-0090

Applicability of Rules

(1) A caregiver registry already in operation on July 1, 2010 shall apply to the Division for a license and pay the applicable fee by August 1, 2010.

(2) The Division shall allow a caregiver registry already in operation on July 1, 2010, three months from its date of application before an on-site

inspection is conducted, in order to allow a caregiver registry to come into compliance with these rules.

(3) A caregiver registry already in operation on July 1, 2010 shall conduct criminal background checks on all caregivers placed on its registry prior to July 1, 2010 if the caregiver has not had a criminal background check in the last three years.

Stat. Auth.: ORS 443.105
Stats. Implemented: ORS 443.035, 443.100, & 443.105
Hist.: PH 9-2010, f. 6-17-10, cert. ef. 7-1-10

Rule Caption: Family Planning Expansion Project.

Adm. Order No.: PH 10-2010

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Rules Amended: 333-004-0010, 333-004-0060, 333-004-0070

Subject: The Department of Human Services, Public Health Division is permanently amending Oregon Administrative Rules related to the Family Planning Expansion Program (FPEP). FPEP is a Medicaid waiver demonstration project approved by the Centers for Medicare and Medicaid Services (CMS). At this time, the program is amending the rule to allow FPEP clients to receive contraceptive supply refills via mail.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-004-0010

Definitions

(1) "Acquisition cost" means the net amount paid per invoice line item to a pharmaceutical manufacturer, supplier or distributor for a contraceptive supply, plus any shipping and handling that is supported by the invoice.

(2) "Approved medical services agreement" means the completed Family Planning Expansion Project agreement, submitted to and approved by the Office of Family Health.

(3) "Citizenship verification" means confirming a client's claim of U.S. citizenship through documentation of a certified birth record, passport or other document(s) deemed acceptable proof of U.S. citizenship by the federal government.

(4) "CLIA" means the Clinical Laboratory Improvement Amendments of 1988, which establishes quality standards for all laboratory testing to ensure the accuracy, reliability and timeliness of patient test results, and allows for certification of clinical laboratories operating in accordance with these federal amendments.

(5) "Client" means a person of any age or gender who is enrolled in and receives contraceptive management services from the Family Planning Expansion Project.

(6) "Client Visit Record" or "CVR" means the form or set of information that is completed for each client visit, and that is used as a data collection instrument and a billing claim form for the Family Planning Expansion Project.

(7) "CMS" means the Centers for Medicare and Medicaid Services, located within the federal Department of Health and Human Services.

(8) "Contraceptive management" means a limited scope of family planning services as described in OAR 333-004-0040.

(9) "DHS" means the Department of Human Services of the State of Oregon.

(10) "DMAP" means the Division of Medical Assistance Programs, within the Department of Human Services.

(11) "Established client" means a person who has been obtaining contraceptive services/supplies from the prescribing clinic for a minimum of three consecutive months.

(12) "Family Planning Expansion Project" or "FPEP" means the Medicaid waiver program that provides statewide family planning services to eligible clients, that is administered by the Office of Family Health within the Department of Human Services.

(13) "Family planning services" means services provided to clients of childbearing age, including minors who can be considered to be sexually active, who desire such services and that are intended to prevent pregnancy or otherwise limit family size.

(14) "Family planning service provider" or "provider" means a licensed health care provider operating within a scope of practice, who is authorized by the Office of Family Health to bill for contraceptive management services for eligible Family Planning Expansion Project clients.

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(15) "FPEP Eligibility Database" means the web-based database designed and managed by the Office of Family Health for the statewide collection, tracking and storage of FPEP client eligibility information.

(16) "FPL" means the federal poverty level guidelines established each year by the Department of Health and Human Services, used to determine eligibility for the Family Planning Expansion Project and other federally funded programs.

(17) "Lawful Permanent Resident" means a person who, notwithstanding other eligibility requirements, is a qualified non-citizen as described in OAR 461-120-0125(4).

(18) "OFH" means the Office of Family Health, the office within the Department of Human Services, Public Health Division that administers the Family Planning Expansion Project.

(19) "Project number" means the administrative number assigned by the Office of Family Health to a family planning agency.

(20) "School-Based Health Center" means a health center certified by the School-Based Health Center Program located within the Office of Family Health.

(21) "Site number" means the administrative number assigned by the Office of Family Health to each clinic within a family planning agency.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 3-2007(Temp), f. 2-23-07, cert. ef. 4-1-07 thru 9-28-07; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 10-2010, f. & cert. ef. 6-30-10

333-004-0060

Standards of Care for Contraceptive Management Services

Participating FPEP providers must agree to provide contraceptive management services according to the following standards.

(1) Informed Consent. The client's decision to participate in and consent to receive contraceptive management services must be voluntary and without bias or coercion.

(a) The informed consent process, provided verbally and supplemented with written materials, must be presented in a language the client understands.

(b) A signed consent must be obtained from the individual client receiving contraceptive management services.

(c) A separate, signed method-specific consent must be obtained from the client for each prescription contraceptive method received.

(2) Confidentiality. Services must be provided in a manner that respects the privacy and dignity of the individual, as provided for in OAR 333-004-0080(8).

(a) Clients must be assured of the confidentiality of services and of their medical and legal records.

(b) Records cannot be released without written client consent, except as may be required by law, or otherwise permitted by the Health Insurance Portability and Accountability Act (HIPAA).

(3) Availability of Contraceptive Services. A broad range of Federal Drug Administration, FDA-approved contraceptive methods and their applications, consistent with recognized medical practice standards, as well as fertility awareness methods must be available on-site at the clinic for dispensing to the client at the time of the visit.

(a) If the provider organization's clinical staff lack the specialized skills to provide vasectomies, intra-uterine devices (IUDs) or subdermal contraceptives, or if there is insufficient volume to ensure and maintain high skill level for these procedures, clients must be referred to another qualified provider for these procedures. The provider must have an established referral arrangement, preferably with other FPEP providers, for these procedures. The clinician receiving the referral must not bill the client for FPEP-covered services.

(b) Clients should be able to get their first choice of contraceptive method during their visits unless there are specific contraindications.

(4) Linguistic and Cultural Competence. All services, support and other assistance must be provided in a manner that is responsive to the beliefs, interpersonal styles, attitudes, language and behaviors of the individuals who are receiving services, and in a manner that has the greatest likelihood of ensuring their maximum participation in the program.

(a) The provider should employ bilingual or bicultural staff, personnel or volunteers skilled or certified in the provision of medical and clinical interpretation during all clinic encounters for clients with limited English proficiency or who otherwise need this level of assistance. All persons providing interpretation services must adhere to confidentiality guidelines.

(b) The provider must assure the competency of language assistance provided to limited English proficiency clients by interpreters and bilingual

staff. Family and friends should not be used to provide interpretation services, unless requested by the client.

(c) The provider must make interpretation services available to all clients needing or requesting such assistance at no cost to the client. The provider must notify clients in need of interpretation services of the availability of such services in accordance with the Civil Rights Act of 1964.

(d) The provider should make easily understandable print materials available to clients and post signage in the languages of groups represented or commonly encountered in the service area.

(e) All print, electronic and audiovisual materials should be appropriate in terms of the client's language and literacy level. A client's need for alternate formats must be accommodated.

(5) Access to Care. Services covered by FPEP must be provided without cost to eligible clients. Clients must be informed of the scope of services available through the program.

(a) Appointments for established clients should be available within a reasonable time period, generally less than two weeks. New clients who cannot be seen within this time period should be referred to other qualified providers in the area.

(b) Contraceptive methods, including emergency contraception, must be available at the clinic site and available to the client at the time of service.

(c) Clinics with the appropriate license from the Oregon Board of Pharmacy may offer established clients the option of receiving their contraceptive methods by mail.

(i) Use of this option is at the discretion of the client; it cannot be offered as the only way in which to receive supplies.

(ii) Contraceptive methods that require a written prescription may only be mailed to established clients who have been using the method(s) for at least three months, with no problems or contraindications.

(iii) Non-prescription methods may be mailed to any established client, irrespective of the client's previous use of the method(s).

(iv) Clients must not incur any cost for the option of receiving contraceptive methods through the mail.

(v) Clinics must package and mail supplies in a manner that ensures the integrity of contraceptive packaging and effectiveness of the method upon delivery. (d) Although not covered by FPEP, treatment and supplies for sexually transmitted infections must be available at the site, or by referral.

(e) Clients in need of additional medical or psychosocial services beyond the scope of the provider organization must be provided with information about available local resources, including domestic violence and substance abuse related services. Clients must also be given a brochure listing locations of free or low-cost primary care services in the area.

(f) All services must be provided to eligible clients without regard to age, marital status, race, parity, disability, gender identity, or sexual orientation.

(g) All counseling and referral-to-care options appropriate to a positive or negative pregnancy test result during authorized contraceptive services must be provided in an unbiased manner, allowing the client full freedom of choice between prenatal care, adoption counseling or pregnancy termination services.

(6) Clinical and Preventive Services.

(a) The scope of contraceptive management services offered to women and female-bodied clients at each FPEP site must include:

(A) A comprehensive health history, including health risk behaviors and a complete obstetrical, gynecological, contraceptive, personal and family medical history; and a sexual health history, in conjunction with contraceptive counseling;

(B) An initial physical examination including cervical cancer screening, that follows a national standard of care. Common sources for national standards of care are the American Cancer Society, the American College of Obstetricians and Gynecologists, and the U.S. Preventive Services Task Force;

(C) Routine laboratory tests related to the decision-making process for contraceptive choices;

(D) Provision of a broad range of FDA-approved contraceptive methods, devices, supplies, and procedures, including emergency contraception;

(E) Follow-up care for maintenance of a client's contraceptive method or for change of method;

(F) Information about providers available for meeting primary care needs and direct referral for needed medical services not covered by FPEP, including management of high-risk conditions and specialty consultation if needed; and

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(G) Preventive and control services for communicable diseases, provided within the context of a contraceptive management visit, including:

(i) Testing and diagnosis for sexually transmitted infections (STIs) as indicated; and

(ii) Reporting of STIs, as required, to appropriate public health agencies for contact management, prevention, and control.

(b) The scope of contraceptive management and clinical preventative services offered to men and male-bodied clients must include:

(A) A comprehensive health history, including health risk behaviors and a complete contraceptive, personal and family medical history; and a sexual health history, in conjunction with contraceptive counseling;

(B) An initial physical examination that includes testicular cancer screening, when indicated;

(C) Provision of contraceptive barrier methods and supplies and of emergency contraception;

(D) Vasectomy or referral for vasectomy;

(E) Information about providers available for meeting primary care needs and direct referral for needed medical services not covered by FPEP, including management of high-risk conditions and specialty consultation if needed; and

(F) Preventive and control services for communicable diseases, provided within the context of a contraceptive management visit, including:

(i) Testing and diagnosis for sexually transmitted infections (STIs) as indicated; and

(ii) Reporting of sexually transmitted infections (STI), as required, to appropriate public health agencies for contact management, prevention, and control.

(c) All services must be documented in the client's medical record.

(7) Education and Counseling Services. The following elements comprise the required education and counseling services that must be provided to all contraceptive management clients:

(a) Initial individual assessment, and re-assessment as needed, of the client's contraceptive management educational needs and knowledge about reproductive health, including:

(A) Counseling and education about a broad range of FDA-approved contraceptive methods, devices, supplies, and procedures, including emergency contraception;

(B) A description of services and clinic procedures, including the pelvic exam and instructions for breast or testicular self-exam;

(C) Relevant reproductive anatomy and physiology, method options, and STI and Human Immunodeficiency Virus (HIV) prevention;

(D) Preventive health care, nutrition, preconception health maintenance, and pregnancy plans;

(E) Psychosocial issues, such as partner relationship and communication, risk-taking, and decision-making; and

(F) An explanation of how to locate and access primary care services not covered by FPEP.

(b) Initial and all subsequent education and counseling sessions must be provided in a way that is understandable to the client and conducted in a manner that respects the dignity and privacy of the client and facilitates the client's ability to make informed decisions about reproductive health behaviors and goals, and must include:

(A) An explanation of the results of the physical examination and the laboratory tests;

(B) Information on where to obtain 24-hour emergency care services;

(C) The option of including a client's partner in the education/counseling session, and other services at the client's discretion; and

(D) Effective educational information that takes into account diverse cultural and socioeconomic factors of the client and the psychosocial aspects of reproductive health.

(c) Each client must be provided with adequate information to make an informed choice about contraceptive management methods, including:

(A) A general verbal or written review of all FDA-approved contraceptive methods, including sterilizations and emergency contraception, along with the opportunity for the client to ask questions. Documentation of this method education must be maintained in the client record;

(B) A description of the implications and consequences of sterilization procedures, if provided;

(C) Specific instructions for care, use, and possible danger signs for the selected method. Documentation of method-specific informed consent must be maintained in the client record;

(D) The opportunity for questions concerning procedures or methods; and

(E) Written information about how to obtain services for contraceptive management related complications or emergencies.

(d) Clinicians and other staff persons providing education and counseling must be knowledgeable about the psychosocial and medical aspects of reproductive health, and trained in client-centered counseling techniques. Staff must make referrals for more intensive counseling as indicated.

(8) Exceptions.

(a) School-based Health Centers are exempt from the requirement to make contraceptive methods available for on-site dispensing described in section (3) and subsection (5)(b) of this rule. Because some school boards prohibit dispensing contraceptives on school grounds, School-based Health Center providers may offer contraceptive methods to clients either on-site or by referral. When offered by referral, providers must have an established referral agreement in place, preferably with another FPEP provider. OFH must be notified of the parties involved in order to ensure proper billing and audit practices. When the referral provider participates in FPEP, that provider may submit claims directly to FPEP for reimbursement of the dispensed supplies. When referral providers do not participate in FPEP, payment arrangements must be made between the referring and receiving providers. Dispensing by any provider must not result in a charge to the client.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009, f. & cert. ef. 3-2-09; PH 10-2010, f. & cert. ef. 6-30-10

333-004-0070

Provider Enrollment

(1) An individual or organization must meet applicable licensing or regulatory requirements set forth by federal and state statutes, regulations, and rules to be enrolled and to bill as a provider. In addition, all providers of services within the state of Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county or city government to operate a business or to provide services.

(2) Signing the medical services agreement constitutes agreement by providers to comply with all applicable rules of OFH and federal and state laws and regulations.

(3) An individual or organization that is currently subject to sanctions by DHS or the federal government is not eligible for enrollment.

(4) An FPEP project number and site number will be issued to an individual or clinic upon:

(a) Completion of the FPEP provider application and submission of the required documents;

(b) The signing of the medical services agreement and related forms by the provider or person authorized by the provider to bind the organization or individual to compliance with these rules;

(c) Verification of licensing or certification; and

(d) Approval of the application by OFH and DMAP.

(5) Issuance of a project number and site number establishes enrollment of an individual or organization as a provider for FPEP services.

(6) If a provider changes address, business affiliation, licensure, ownership, certification, billing agents or Federal Tax Identification Number (TIN), OFH must be notified in writing within 30 days of the change. Failure to notify OFH of a change of Federal Tax Identification Number may result in the imposition of a fine. Changes in business affiliation, ownership, and Federal Tax Identification Number may require the submission of a new application. Payments made to providers who have not furnished such notification may be recovered.

(7) Providers of services outside the state of Oregon may be enrolled under the following conditions:

(a) The provider is appropriately licensed or certified and meets standards established within the provider's state for participation in Medicaid; and

(b) The provider lives in a state contiguous to Oregon, and is within 75 miles of the Oregon border.

(8) Provider termination:

(a) The provider may terminate enrollment at any time. The request must be made to the OFH in writing, via certified mail, return receipt requested. The notice shall specify the provider number to be terminated and the effective date of termination. Termination of the provider enrollment does not terminate any obligations of the provider for dates of services during which the enrollment was in effect.

(b) FPEP provider terminations or suspensions by OFH and subsequent recovery of any payments may be for, but are not limited to the following reasons:

(A) Breaches of the medical services agreement;

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(B) Failure to comply with the statutes, regulations and policies of DHS, and federal or state regulations that are applicable to the provider;

(C) Loss of the appropriate licensure or certification; or

(D) Disenrollment from another state's Medicaid program.

(c) FPEP provider enrollment may be terminated by OFH due to inactivity. After 12 months of no claims activity, providers will be contacted by OFH regarding termination of program participation.

(9) The provider is entitled to a contested case hearing to determine whether the provider's project and site number will be revoked.

(10) In the event of bankruptcy proceedings, the provider must immediately notify OFH in writing.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.010

Hist.: PH 4-2005, f. & cert. ef. 2-18-05; PH 5-2007, f. 4-9-07, cert. ef. 4-23-07; PH 2-2009,

f. & cert. ef. 3-2-09; PH 10-2010, f. & cert. ef. 6-30-10

Rule Caption: Ambulance Service Licensing.

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Subject: The Department of Human Services, Public Health Division is permanently amending Oregon Administrative Rules chapter 333, division 250, to streamline and clarify rules pertaining to ambulance service licensing.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-250-0010

Definitions

(1) "Advanced Emergency Medical Technician (AEMT)" has the meaning given that term in OAR chapter 333, division 265.

(2) "Advertise" means to communicate information to the public, or to any person concerned, by any oral, written, or graphic means including, but not limited to, handbills, newspapers, television, billboards, radio, Internet and telephone directories.

(3) "Agent" means a medical or osteopathic physician licensed under ORS chapter 677, actively registered and in good standing with the Oregon Medical Board, a resident of or actively participating in the area in which the emergency service is located, designated by the supervising physician to provide direction of the medical services of EMTs and First Responders as specified in OAR chapter 847.

(4) "Ambulance" or "Ambulance Vehicle" means any privately or publicly owned motor vehicle, aircraft, or watercraft that is regularly provided or offered to be provided for the emergency transportation of persons who are ill or injured or who have disabilities.

(5) "Ambulance Based Clinician" means a registered nurse, physician, or physician assistant who:

(a) Has an active license in Oregon and is in good standing with the Oregon Board of Nursing or the Oregon Medical Board; and

(b) Staffs an ambulance for a licensed ambulance service.

(6) "Ambulance Service" means any person, governmental unit, corporation, partnership, sole proprietorship, or other entity that operates ambulances and that holds itself out as providing prehospital care or medical transportation to persons who are ill or injured or who have disabilities.

(7) "Ambulance Service Area (ASA)" means a geographic area served by one ground ambulance service provider, and may include all or portion of a county, or all or portions of two or more contiguous counties.

(8) "Business Day" means Monday through Friday when the Division is open for business, excluding holidays.

(9) "Division" means the Oregon Public Health Division, Emergency Medical Services and Trauma System Section, within the Department of Human Services.

(10) "Emergency Care" means the performance of acts or procedures under emergency conditions in the observation, care and counsel of the ill, injured or disabled; in the administration of care or medications as prescribed by a licensed physician, insofar as any of these acts is based upon knowledge and application of the principles of biological, physical and social science as required by a completed course utilizing an approved curriculum in prehospital emergency care. However, "emergency care" does not include acts of medical diagnosis or prescription of therapeutic or corrective measures.

(11) "Emergency Medical Responder" has the meaning given that term in OAR chapter 333, division 265.

(12) "Emergency Medical Technician" or "EMT" has the meaning given that term in OAR chapter 333, division 265.

(13) "EMS" means Emergency Medical Services.

(14) "EMS Medical Director" has the same meaning as "Supervising Physician" in ORS 682.025.

(15) "EMS Training Director" means a person who has the responsibility for coordinating EMS training, obtaining qualified instructors and maintaining the personnel training records for a licensed ambulance service.

(16) "EMT-Basic" has the meaning given that term in OAR chapter 333, division 265.

(17) "EMT-Intermediate" has the meaning given that term in OAR chapter 333, division 265.

(18) "EMT-Paramedic" or "Paramedic" has the meaning given that term in OAR chapter 333, division 265.

(19) "Employee" means any full-time paid or part-time paid person acting within the scope of his or her duties and for or on behalf of an ambulance service.

(20) "First Responder" has the meaning given that term in OAR chapter 333, division 265.

(21) "Fraud or Deception" means the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact or any other means by which misinformation or false impression is knowingly given.

(22) "License" means the documents issued by the Division to the owner of an ambulance service when the service and its ambulance are found to be in compliance with ORS Chapter 682, OAR chapter 333, division 255 and these rules.

(23) "Non-emergency Care" means the performance of acts or procedures on a patient who is not expected to die, become permanently disabled or suffer permanent harm within the next 24-hours, including but not limited to observation, care and counsel of a patient and the administration of medications prescribed by a physician licensed under ORS Chapter 677, insofar as any of those acts are based upon knowledge and application of the principles of biological, physical and social science and are performed in accordance with scope of practice rules adopted by the Oregon Medical Board in the course of providing prehospital care as defined by this rule.

(24) "Owner" means the person having all the incidents of ownership in an ambulance service or an ambulance or, where the incidents of ownership are in different persons, the person, other than a security interest holder or lessor, entitled to the possession of an ambulance vehicle or operation of an ambulance service under a security agreement or a lease for a term of 10 or more successive days.

(25) "Patient" means a person who is ill or injured or who has a disability and who is transported in an ambulance.

(26) "Person" means any individual, corporation, association, firm, partnership, joint stock company, group of individuals acting together for a common purpose, or organization of any kind and includes any receiver, trustee, assignee, or other similar representative thereof.

(27) "Physician" means a person licensed under ORS Chapter 677, actively registered and in good standing with the Oregon Medical Board as a Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO).

(28) "Prehospital Care" means that care rendered by emergency medical technicians as an incident of the operation of an ambulance as defined by ORS chapter 682 and that care rendered by emergency medical technicians as incidents of other public or private safety duties, and includes, but is not limited to "emergency care" as defined by ORS Chapter 682.

(29) "Prehospital Care Report Form (PCRF)" means a Division-approved form or electronic field data format that is completed for all patients receiving prehospital assessment, care or transportation to a medical facility.

(30) "Procedure" means a written, dated and signed course of action to carry out a directive. A procedure must be able to answer the questions; who, what, why, when and where.

(31) "Volunteer" means a person who is working without wages and is acting within the scope of his or her duties for an ambulance service, but who may receive reimbursement for personal expenses incurred.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

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333-250-0020

Application Process to Obtain an Ambulance Service License

(1) Every person who furnishes, operates, conducts, maintains, advertises, engages in, proposes to engage in, or professes to engage in the provision of ambulance service must apply for and receive an ambulance service license from the Division before offering such service to the public.

(2) The applicant for an ambulance service license must possess at least one ambulance, facilities, equipment, emergency medical personnel, staffing capabilities, communications system, and services meeting the requirements of ORS chapter 682 and these rules.

(3) An applicant for an ambulance service license must submit an application to the Division on a form specified by the Division. A completed application form must contain, at a minimum:

(a) The name and address of the person or public entity owning the ambulance service;

(b) If other than the applicant's true name, the name under which the applicant is doing business;

(c) If for a corporation, a limited partnership, or a limited liability company, attach to the application:

(A) A written statement from the Oregon Secretary of State's Corporation Division Office that the ambulance service is registered in accordance with the requirements of the Secretary of State's Corporation Division Office and that the ambulance service is in good standing and has filed all its annual reports, together with filing fees;

(B) The name of the registered agent of the ambulance service that is on file with the Secretary of State's Corporation Division Office; and

(C) All trade names recorded with the Secretary of State's Corporation Division Office for this business entity, and if this business entity is a subsidiary, all trade names or names of all other subsidiaries recorded with the Secretary of State's Corporation Division Office.

(d) If for a public agency, documentation from local city or county authorizing operation as an ambulance service.

(e) A copy of a signed signature authorization form or a power of attorney;

(f) The name of the principal contact person that the ambulance service wants contacted regarding official communications with the Division, if different than identified in subsection (3)(a) of this rule;

(g) The mailing and actual street address of the principal place of business of the ambulance service and the actual street address of all fixed locations where an ambulance is parked when not in operation;

(h) Proof of financial responsibility as specified in ORS 682.105. Proof must be in the form of a certificate of insurance;

(i) Copies of all licenses issued by the Federal Communications Commission (FCC) for the operation of the ambulance service's communications equipment and radio configuration data as required by the Division or written authorization from a FCC license holder to use the license holder's frequencies;

(j) If laboratory tests are conducted that require a license, a copy of that license;

(k) A copy of the operator's Air Carrier Operating Certificate, if the service will be operating an air ambulance;

(l) A copy of the operator's US Coast Guard Certificate of Compliance, if the service will be operating a marine ambulance;

(m) Copies of all telephone book yellow pages, where ambulance service advertising appears;

(n) A copy of a Prehospital Care Report Form or electronic field data format, which must be approved by the Division, if not using the Division's Prehospital Care Report Form;

(o) A roster of all emergency medical personnel, ambulance based clinicians, and ambulance operators in alphabetical order, who shall either operate an ambulance or attend to patients, or both, along with the following information for each employee and volunteer:

(A) The full legal name;

(B) The employment status as either full-time paid, part-time paid or volunteer;

(C) The level of professional certification or license held; and

(D) The certification or other license numbers, including driver and pilot license numbers for those persons operating the ambulance.

(p) A list of all ambulances to be operated by the ambulance service under the ambulance service license along with the information required for an ambulance license pursuant to ORS chapter 682 and these rules;

(q) A statement under the penalties of perjury that certifies the following:

(A) There has been no attempt to knowingly and willfully falsify, conceal, or omit a material fact, or make any false, fictitious, incomplete or

fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry for the purpose of obtaining or attempting to obtain an ambulance service license to operate in the State of Oregon. Where an applicant relies on documents submitted by employees, volunteers or agents, the applicant has made a reasonable effort to verify the validity of those documents;

(B) The applicant authorizes any persons or entities, including but not limited to hospitals, institutions, organizations, or governmental entities to release to the Division any information, files, or records requested by the Division in connection with the processing of an application; and

(C) Upon receiving an ambulance service license, the licensee authorizes disclosure of information by insurance companies, physicians, health care facilities, including but not limited to hospitals, nursing homes, or free standing medical centers, to the Division relating to service provided by the ambulance service to those facilities or to patients being taken from or to those facilities.

(r) The completed application must contain the signature(s) of the person(s) having the lawful responsibility for the overall operation of an ambulance service or the person having the power of attorney, or the authorized person empowered to sign on behalf of the ambulance service; and

(s) Such other information as the Division may reasonably require.

(4) If the applicant's primary ambulance service business office is located in another state, the applicant must:

(a) Meet requirements listed in sections (1) through (3)(s) of this rule; and

(b) Attach copies of their current ambulance service and ambulance license(s) for that state to the application.

(5) The completed application to license an ambulance service must be accompanied by a nonrefundable licensing fee of:

(a) \$75, when the service has a maximum of four full-time paid positions; or

(b) \$250, when the service has five or more full-time paid positions.

(6) Upon review of the completed initial application and nonrefundable fee, the Division shall schedule an inspection of the applicant's facilities, records and ambulances. The applicant must successfully complete the inspection to be issued an ambulance service license. A license shall be issued within 10 business days of successful inspection.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0040

Ambulance Service Operational Requirements

(1) The licensee must ensure that the service, employees, volunteers and agents:

(a) Comply with all of the requirements of ORS Chapter 682, ORS 820.300 through 820.380 and other applicable federal, state and local laws and regulations governing the operation of a licensed ambulance service;

(b) Notify the Division, upon making initial application or within 14-days of the date of registration, of any new "trading as", "division of", or "doing business as" names utilized by the licensee; and

(c) Transport only patients for which it has the resources to provide appropriate medical care and transportation unless in transfers between medical facilities, the sending or receiving facility has provided medically appropriate life support measures, personnel, and equipment to sustain the patient during the transfer.

(2) The licensee shall document that each employee or volunteer:

(a) Is provided an initial orientation program that addresses, at a minimum, the ambulance service standing orders, ambulance service policies and procedures, driving and operating requirements for ambulance vehicles, and operations of equipment. The initial orientation program must be completed prior to the employee or volunteer being allowed to staff an ambulance; and

(b) Has access to current copies of these rules, and the documents referred to within these rules that are incorporated by reference.

(3) The licensee must have written procedures to carry out daily ambulance service operations. Procedures must include, but are not limited to:

(a) Bloodborne pathogen procedures that are in compliance with OAR chapter 437;

(b) The storage of medications including controlled substances if authorized by the EMS Medical Director. This procedure must meet Oregon Board of Pharmacy requirements in OAR chapter 855 and US Drug Enforcement Administration requirements found in 21 CFR 1301.75(b).

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(c) The destruction of outdated medications including controlled substances if authorized by the EMS Medical Director. This procedure must meet Oregon Board of Pharmacy Requirements found in OAR chapter 855 and US Drug Enforcement Administration requirements found in 21 CFR 1307.21.

(d) A procedure for notifying the licensee when an employee is impaired by excessive fatigue, illness, injury or other factors that may reasonably be anticipated to constitute a threat to the health and safety of patients or the public;

(e) The reporting of suspected child abuse as required in ORS 419B.005 through 419B.050; and

(f) The reporting of suspected elderly abuse as required in ORS 124.050 through 124.095.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0041

Ambulance Service Personnel Educational Requirements and Quality Improvement

(1) The licensee shall provide, coordinate, and document the following:

(a) An orientation program for all new emergency medical personnel, ambulance based clinicians and ambulance operators. The initial orientation program must include but is not limited to the subjects listed in OAR 333-250-0040(2)(a); and

(b) The training of all emergency medical personnel and ambulance based clinicians on the proper use of any new equipment, procedure or medication prior to being placed into operation on an ambulance.

(2) Before the licensee permits a person to staff an ambulance, the licensee shall ensure that the person has current training that includes but is not limited to:

(a) Bloodborne pathogen and infectious disease training that meets or exceeds standards found in OAR chapter 437;

(b) Hazardous materials awareness training that meets or exceeds the Oregon Occupational Safety and Health Division standards found in OAR chapter 437;

(c) Emergency ground ambulance operator's training that meets Division standards when operating a ground ambulance;

(d) Air medical crew training that meets Division standards when operating an air ambulance; and

(e) Marine crew training that meets Division standards when operating a marine ambulance.

(3) The licensee shall ensure that there is verifiable written documentation placed in the employee's or volunteer's training file that the employee or volunteer has completed the training and the documentation shall include when and where the training was obtained.

(4) Any EMS related or required continuing education offered by the licensee or designee must be documented as follows:

(a) A class roster that contains:

(A) Name of the ambulance service;

(B) Name of the instructor;

(C) Full name of the person attending the class;

(D) Class date;

(E) Class subject; and

(F) Class length; or

(b) A computer-generated printout history of an individual's continuing education record that contains:

(A) The full name of the person or employee;

(B) Name of the ambulance service;

(C) Class dates;

(D) Class subjects; and

(E) Class lengths.

(5) Documentation required in section (4) of this rule must be maintained in a secure manner with limited access for a minimum of four years.

(6) The licensee must establish a procedure to release copies of all records of continuing education completed by an emergency medical technician, emergency medical responder or employee through the service in a verifiable format to the requesting party within five business days of being requested.

(7) The licensee must have a written quality improvement program that is approved by the EMS Medical Director.

(8) To assist the licensee and the EMS Medical Director in determining if appropriate and timely emergency medical care was rendered, the

ambulance service designated official may request the following information from the hospital receiving the patient as authorized by ORS 682.056:

(a) Patient admit status and unit admitted to;

(b) Any procedure listed in section D04_04 of the National Highway Transportation Safety Administration dataset dictionary, version 2.2.1, and performed on the patient within the first hour of being admitted;

(c) Any medication administered to the patient within the first hour of being admitted; and

(d) Trauma system entry by emergency department staff.

(9) Information provided under section (8) of this rule is considered confidential pursuant to ORS 682.056. Any employee or volunteer participating in a quality improvement session must have a signed confidentiality statement in their personnel file.

(10) If the licensee accepts students for EMT-Paramedic internships from an accredited teaching institution, the licensee must:

(a) Have a signed and dated contract with each teaching institution providing internship students; and

(b) Use qualified preceptors, as defined by OAR 333-265-0000, who will be assigned to supervise, document and evaluate the Paramedic interns.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0042

Ambulance Operational Requirements

(1) The licensee must ensure that the service, employees, volunteers and agents providing ground ambulance service:

(a) Comply with all applicable statutes in the 2007-2008 Oregon Motor Vehicle Codes relating to motor vehicle and emergency vehicle operations, ORS 820.300 through 820.380 and ORS Chapter 445.

(b) Successfully complete an emergency vehicle operator's course of instruction prior to independently operating an ambulance. The course must meet or be equivalent to the National Safety Council for Emergency Vehicle Operators Course (CEVO 2 or 3) or National Fire Protection Agency (NFPA) Driver.

(c) Comply with the licensee's procedures.

(2) A licensee shall have a procedure:

(a) Detailing the operation of an ambulance for both emergency and non-emergency situations;

(b) To remove an ambulance from service when the mechanical condition of an ambulance is sufficiently unreliable so as to endanger or potentially endanger the health, safety, or welfare of a patient or crew member;

(c) To handle a mechanical breakdown and to repair or replace a damaged tire or wheel when the ambulance is in operation; and

(d) Detailing what steps are to be followed when an ambulance is involved in an accident. The procedure must include the submission of a legible copy of the Department of Motor Vehicles Accident Report to the Division within 10 business days of the accident.

(3) The licensee must ensure that the service, employees, volunteers and agents providing air ambulance service:

(a) Comply with the Federal Acquisition Regulation (FAR), 14 CFR Part 135 of the Operating requirements; Commuter and on demand operations and rules governing persons on board such aircraft; and

(b) Successfully complete the 2004 Association of Air Medical Services (AAMS) Guidelines or equivalent. There must also be an annual review of the Air Medical Crew course material, the length of which must be established by the EMS Medical Director.

(4) A licensee may only utilize an ambulance for the provision of providing ambulance service that has been issued a license by the Division and that complies with all requirements of ORS Chapter 682, OAR chapter 333, division 255, and these rules.

(5) A licensee must not allow or schedule an employee or volunteer to serve on an ambulance who is impaired by excessive fatigue, illness, injury or other factors that may reasonably be anticipated to constitute a threat to the health and safety of patients or the public.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0043

Ambulance Service Personnel Record Keeping and Reporting Requirements

(1) The licensee must:

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(a) Maintain a complete and current personnel file, training file, and/or medical file for each employee and volunteer, including but not limited to:

- (A) Full name;
- (B) Current home mailing address;
- (C) Affiliation status, listed as either an employee full-time paid, employee part-time paid, volunteer, or agent;
- (D) Copies of:

(i) Reportable actions forms or E-4 as required under OAR 333-250-0043(5);

- (ii) Applicable professional certificates or licenses;
- (iii) A current driver's license;
- (iv) A current pilot's license if the employee or volunteer operates an air ambulance;

(v) A certified court printout of initial driver's license check done through the Oregon Department of Motor Vehicles Automated Reporting System Program or equivalent reporting program as approved by the Division, and any subsequent reported convictions, accidents or license suspensions. If the driver has an out-of-state driver's license, the licensee must participate in a similar program for that state, if available and if not available, conduct an annual driving record check; and

(vi) Current healthcare provider CPR card or proof of course completion that meets or exceeds the 2005 American Heart Association ECC guidelines or equivalent standards approved by the Division.

(b) If the licensee contracts with or employs ambulance based clinicians for the purpose of providing advanced level care, the licensee shall ensure that the clinicians:

(A) Meet all of the applicable requirements in OAR chapter 333, division 250;

(B) Have documentation of a current Advanced Cardiac Life Support course or other Division-approved equivalent course completion;

(C) Have documentation of current Pediatric Advanced Life Support or other Division-approved equivalent course completion; and

(D) Have documentation of completing a current Prehospital Trauma Life Support, Basic Trauma Life Support, Trauma Emergency Assessment Management or Trauma Nurse Core Course. The Trauma Emergency Assessment Management and Trauma Nurse Core Course must include a supplemental prehospital rapid extrication training session.

(c) Documentation that an employee or volunteer has completed:

(A) An ambulance service initial orientation program that includes requirements set forth in OAR 333-250-0040(2)(a) and (b);

(B) A bloodborne pathogen and infectious disease training course that meets standards found in OAR 437-002-0360 and 437-002-1030 and an annual refresher training course;

(C) A Hazardous Materials Awareness training course that meets or exceeds the Oregon Occupational Safety and Health Division standards found in OAR chapter 437 and an annual refresher training course;

(D) A Division-approved emergency vehicle operator's course for ground ambulance drivers only. The course must meet or be equivalent to the standards of the National Safety Council for Emergency Vehicle Operators Course, (CEVO II-IIIAMB) or NFPA Driver;

(E) The US Department of Transportation's Air Medical Crew National Standard Curriculum course or equivalent and annual refresher training for persons staffing air ambulances only;

(F) Initial Tuberculosis (TB) screening and any subsequent TB screenings;

(G) Hepatitis-B immunizations or a signed statement of declination;

(H) A signed statement by a driver not certified or licensed through the Division that they are:

(i) Not addicted to alcohol or controlled substances and are free from any physical or mental condition that might impair the ability to operate or staff an ambulance; and

(ii) Physically capable of assisting in the extrication, lifting and moving of a patient.

(2) A licensee shall have documentation of items listed in section (1) of this rule prior to the employee or volunteer being allowed to independently staff an ambulance. Note: an employee or volunteer must begin the Hepatitis-B immunization series or have a signed statement of declination prior to independently staffing an ambulance.

(3) All records relating to an ambulance service's operations must be retained by the licensee or the licensee's successors or assigns for not less than seven years from the date of implementation, purchase, dispatch, etc., or longer if so required by law or regulation. The record keeping mechanism may be in any permanent form including paper or on magnetic media

provided that the information can be made readily available for inspection by the Division.

(4) The licensee must promptly submit to the Division such information, including survey information, that the Division may reasonably require.

(5) The licensee must submit a completed Division-approved reportable action or E-4 form to the Division, within the times specified, for any of the following actions:

(a) Hiring a new employee or volunteer, within 14 business days;

(b) Terminating or suspending an employee or volunteer for cause, within 14 business days; and

(c) Disciplinary action taken by the licensee or the EMS Medical Director for unprofessional conduct as listed in OAR 333-265-0000, within 14 business days.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0044

Prehospital Care Report Form or Electronic Field Data Form Completion Requirements

(1) The licensee must complete a PCRf in each instance where an ambulance arrives on the scene and patient contact is initiated.

(2) A complete PCRf or electronic field data form as specified by the Division must be prepared by ambulance personnel and delivered to appropriate hospital staff at the time patient care is transferred, unless the PCRf is provided electronically under section (3) of this rule.

(3) If a PCRf is provided via electronic format, a licensee shall ensure that personnel verbally relay pertinent patient care information to hospital staff prior to leaving the hospital. A completed electronic report must be submitted to the hospital at a location designated by the hospital within 12 hours of the patient being transported to the hospital.

(4) If the ambulance crew is unable to complete the PCRf at the time patient care is transferred, the ambulance crew may depart after receiving verbal verification from an emergency department employee involved with providing patient care that sufficient patient information has been transferred to support safe and timely continuation of patient care.

(5) The licensee must return the ambulance crew to the hospital when requested by the attending physician for the purpose of obtaining the completed PCRf or additional patient care information. If acceptable to the attending physician, a completed PCRf can be faxed or electronically sent to the hospital;

(6) A licensee must ensure that a PCRf or electronic field data form contains data points as defined by version 2.2.1 of the National Highway Transportation Safety Administration Uniform Pre-Hospital Emergency Medical Services Dataset; and

(a) For any patient meeting the criteria for trauma patient as defined in OAR 333-200-0010(26):

(A) Trauma band number; and

(B) Triage criteria as defined in OAR 333-200-0010, Exhibit 2.

(7) Notwithstanding the requirements in this rule, a completed PCRf or electronic field data form is not required when there is a disaster or a multiple patient incident consisting of more than five patients or the number of patients prescribed in the county's ASA plan, and which results in a single ambulance transporting two stretcher patients at the same time or when an ambulance is required to make more than one trip to and from the incident site. In those situations, a completed triage tag that includes listing of the trauma systems identification bracelet number, recording of the times and results of all vital signs taken and the times, name and dosage of any medication given is acceptable patient care documentation. However, every reasonable attempt must be made by the ambulance personnel or ambulance based clinicians to complete an approved PCRf or electronic field data form for each patient at the conclusion of the incident.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0045

Storage, Release and Destruction of Prehospital Care Report Form Requirements

(1) The licensee is responsible for:

(a) Providing secure storage of PCRfs, with limited access to the PCRfs by office and ambulance personnel;

(b) Providing that the PCRfs are organized in a manner that will allow an authorized ambulance service representative to locate a PCRf

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within a reasonable amount of time, given a patient's name and the date and time of the ambulance call;

(c) Establishing a procedure for when a copy of the PCRf may be released to a medical facility receiving the patient, the patient, the patient's family, the patient's legal guardian, an insurance company, an attorney, a law enforcement officer, or a law enforcement agency;

(d) Protecting the confidentiality of patient information during quality improvement sessions by limiting access to the PCRf and having all persons having access to PCRfs sign a confidentiality statement; and

(e) Establishing a procedure for the method and verification of the destruction of a PCRf:

(A) Except for a minor patient, unless a patient is notified, an ambulance service may not destroy a medical record or report about a patient for 10 years after the record or report is made, or longer if so required by law or regulation.

(B) In the case of a minor patient, a medical record or report about a minor patient may not be destroyed until the patient attains the age of majority plus three years or for 10 years after the record or report is made, whichever is later, unless the parent or guardian of the minor patient is notified.

(i) Notification of a minor patient or the parent or guardian of the minor patient of the potential destruction of a prehospital care report must:

(I) Be made by first class mail to the last known address of the patient;

(II) Include the date on which the record of the patient shall be destroyed; and

(III) Include a statement that the record or synopsis of the record, if wanted, must be retrieved at a designated location within 30-days of the proposed date of destruction.

(2) Under no circumstances shall an employee, volunteer or agent make a copy of a PCRf for their own personal record or remove the original or a copy of a completed PCRf from the licensee's files or facilities without having written approval of the licensee.

(3) All PCRfs must be made available for inspection and duplication when requested by the Division as authorized by ORS 41.675 and 41.685.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0046

Ambulance Service Communications and Dispatching Operational Requirements

(1) The licensee is responsible for:

(a) Having a valid license from the Federal Communications Commission (FCC) to operate an EMS radio on assigned frequencies, or proper authorization from another agency holding a valid FCC license to operate on designated radio frequencies;

(b) Having 24-hour-a-day phone answering and dispatching capabilities or having a signed agreement or contract with a recognized primary or secondary Public Safety Answering Point (PSAP), who will provide telephone answering and emergency dispatching services;

(c) Providing a reliable means of alerting and communicating with an ambulance crew before, during and after an ambulance call;

(d) Immediately routing all emergency calls received from the public on any of the licensee's 10-digit telephone number to the primary PSAP. When a licensee receives a request for an emergency ambulance and the licensee is a recognized secondary PSAP, the licensee shall dispatch the ambulance and notify the primary PSAP for coordination of other emergency responder agencies;

(e) Ensuring that any request for an ambulance received on the licensee's 10-digit telephone number is answered by a live person or that there is an answering machine referring the caller to the appropriate emergency telephone number; and

(f) Maintaining ambulance dispatch records as prescribed in ORS 820.330 and 820.340. The records must be kept by the licensee or the licensee must have a signed agreement with the PSAP, service or agency that provides telephone answering and dispatching services that they will maintain and make available copies of the official dispatch records for a minimum of seven years.

(2) When the licensee employs dispatchers for the purpose of answering the telephone, taking information regarding the need for an ambulance and dispatching the ambulance, the dispatcher must have written documentation of completing:

(a) The Department of Public Safety Standards and Training's Emergency Medical Dispatcher's Course or equivalent; and

(b) Four hours of annual refresher training for dispatchers that meets the standards set forth by the Department of Public Safety Standards and Training.

(3) Air ambulance must meet Federal Acquisition Regulation (FAR), 14 CFR Part 135 of the Operating requirements; Commuter and on demand operations and rules governing persons on board such aircraft.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0047

Ambulance Service EMS Medical Director Operational Requirements

(1) The licensee must have a single EMS Medical Director except:

(a) When the licensee operates in non-contiguous counties, then the licensee may have one EMS Medical Director in each non-contiguous county of operation; or

(b) Where a county or regional EMS system prescribes that multiple agencies within a county or region must have a governmentally appointed EMS Medical Director, that agency may have a different EMS Medical Director in contiguous counties. In this event, the signed agreement or contract may be between the EMS Medical Director and the county or regional EMS system.

(2) The licensee must ensure that the EMS Medical Director:

(a) Meets the requirements and duties as prescribed in OAR 847-035-0020 through 847-035-0030;

(b) Has a written set of treatment protocols for each level of service offered by the licensee; and

(c) Has a signed and dated agreement or contract with the licensee.

(3) When an EMS Medical Director authorizes the administration of controlled substances, the EMS Medical Director must have on file with the licensee:

(a) A US Drug Enforcement Administration License listing the name of the ambulance service and address where the controlled substances are stored when not on an ambulance; and

(b) A signed and dated procedure as to the amount stored on the ambulance and how controlled substances will be stored, accessed, recorded, administered, destroyed and secured. It is the responsibility of the EMS Medical Director to ensure that the procedure meets the minimum US Drug Enforcement Administration requirements found in 21 CFR 1301.75(b).

(4) The licensee must notify the Division in writing of:

(a) The denial, suspension, or voluntary surrender of an EMS Medical Director's medical license or US Drug Enforcement Administration license within 72 hours; and

(b) A change in the EMS Medical Director, 21-days prior to the change.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0048

Ambulance Service Ambulance Personnel Operational Requirements

(1) The licensee must ensure that the service, employees, volunteers and agents meet the personnel requirements as prescribed in these rules.

(2) The licensee must not schedule or allow an employee or volunteer to serve on an ambulance who is impaired by excessive fatigue, illness, injury or other factors that may reasonably be anticipated to constitute a threat to the health and safety of patients or the public.

(3) The licensee shall require each person staffing an ambulance or providing prehospital emergency or non-emergency care to display his or her level of certification or licensure on the outermost garment of his or her usual work uniform at all times while staffing an ambulance or rendering patient care, and shall make reasonable efforts to display this information under other circumstances.

(4) The licensee shall ensure that any emergency medical personnel, ambulance based clinicians or ambulance operators:

(a) Are trained to properly operate all ambulances and equipment that he or she is authorized to use; and

(b) Are physically capable and have the ability to lift and move patients and assist in extrication of patients when necessary.

(5) The licensee shall not permit employees or volunteers to operate an ambulance, equipment, or have patient contact if:

(a) They are taking any medications that could impair safe operation and handling of the ambulance, equipment, or patient; or

(b) The employee or volunteer has consumed any alcoholic beverages within the last eight hours.

Stat. Auth.: ORS 682.017

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Stats. Implemented: ORS 682.017 - 682.117, 682.991
Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0049

Ambulance Service Housing of Personnel, Ambulance and Equipment Operational Requirements

- (1) The licensee must provide:
 - (a) An area where an employee or volunteer working a 24-hour shift may sleep or rest;
 - (b) An area equipped with adequate toilet, hand-washing and shower facilities with hot and cold running water, antiseptic soap and clean towels for hand and body drying. If the ambulance service facility does not have shower facilities, the licensee must have a signed agreement or contract with a medical facility or other entity to make available shower facilities to ambulance personnel for the purpose of showering after coming in contact with medical or other biohazardous waste;
 - (c) Separate areas for clean and soiled linen receptacles in accordance with the applicable Oregon Occupational Safety and Health Division and other rules governing the handling of special medical wastes;
 - (d) A designated secure area for storing, or an alternate method and a procedure for identification and storage of, all medications which are deteriorated, outdated, misbranded, adulterated or otherwise unfit for use. This area or procedure must provide for the physical separation of defective supplies so that products are not confused with usable products. Security procedures for unusable medications, fluids and controlled substances must be the same as for usable supplies;
 - (e) A separate area to place clearly marked "out of service" malfunctioning patient care equipment until the equipment has been repaired or replaced or enforces a procedure for an alternate method of identification and storage to assure that defective equipment will not be used; and
 - (f) A reasonable inventory of patient care equipment, supplies and medications, properly secured, or in the alternative, a signed agreement with a medical facility that the medical facility will provide the patient care equipment, supplies, and medications.

(2) A licensee shall ensure that:

- (a) Controlled substances, when authorized by the EMS Medical Director, are stored, accessed, inventoried, administered, destroyed and secured in a manner consistent with the signed and dated procedure established by the EMS Medical Director. The procedure must be in accordance with the regulations promulgated by the US Drug Enforcement Administration (DEA) found in 21 CFR 1301.75(b).
- (b) A copy of the EMS Medical Director's DEA license is maintained in a secure manner, inaccessible to the public, at each fixed ambulance location where controlled substances are stored other than in the ambulance.
- (c) Pharmacological and medical supplies with expiration dates affixed thereon by the manufacturer or packager are removed from service no later than the expiration date. Expired pharmacological and medical supplies must be disposed of in accordance with applicable laws and regulations.
- (d) Medications and equipment are stored in a manner that protects viability and proper operation; and
- (e) Ambulances available for or subject to a call are maintained to allow immediate starting of the engine and to prevent medications and medical supplies from becoming environmentally degraded.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0060

Right of Entry and Inspection of an Ambulance Service and Ambulance

- (1) The Division may conduct an inspection for the purpose of evaluating the eligibility of an ambulance service or an ambulance to receive or retain a license and to ensure the health, safety, and welfare of the persons who utilize ambulances. Ambulance services that acquire and maintain current status with a nationally recognized EMS service program accreditation entity that meets or exceeds Oregon requirements may be exempted from the inspection process. A copy of the inspection report from the nationally recognized EMS service program accreditation entity must be filed with the Division for approval.
- (2) Routine inspections of an ambulance service or an ambulance must be scheduled with the management of the ambulance service at least 72-hours in advance of the inspection unless otherwise mutually agreed upon by the Division and the ambulance service representative.

(3) Investigative inspections for the purpose of ensuring continued compliance with ORS chapter 682 and these rules do not require giving advanced notice to the licensee.

(4) In conducting an inspection or interview, the Division representative must:

- (a) Identify him or herself by presenting the Division identification to the owner, manager, or ranking employee or volunteer present at the site of an inspection or interview;
- (b) Inform the ambulance service representative of the purpose for the inspection or interview; and
- (c) Inform the ambulance service representative when the inspection or interview has been completed and the results of the inspection only.

(5) The Division may make photographic or video-graphic documentation as part of an inspection for or an investigation of non-compliance with ORS Chapter 682 and these rules.

(6) Failure of the licensee to produce records for inspection or to permit examination of equipment and facilities by the Division shall be grounds for the denial, suspension or revocation of an ambulance service or ambulance license.

(7) The Division may accept local city or county governing body inspections that meet or exceed requirements outlined in ORS Chapter 682 and OAR chapter 333, divisions 250 and 255 in lieu of an inspection by the Division.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

333-250-0070

Denial, Suspension, or Revocation of an Ambulance Service License or Placing an Ambulance Service on Probation

(1) Conduct subjecting an ambulance service to discipline means conduct unbecoming a person who is either applying for or holds an ambulance service license and is detrimental to the best interest of the public and includes, but is not limited to the conduct listed in this rule.

(2) The Division may, in accordance with the provisions of ORS Chapter 183, deny, suspend, or revoke an ambulance service license or ambulance license. The Division may also place an ambulance service on probation, the terms of which shall be established by the Division. In addition to or in lieu of probation, suspension or revocation, the Division may cite an ambulance service for a violation and request corrective action.

(3) An individual, firm, partnership, limited liability company, corporation, association, or organization shall be considered in violation of ORS Chapter 682 and these rules if the Division determines that the individual, firm, partnership, limited liability company, corporation, association, or organization has done any of the following:

(a) Been convicted of a crime, including conviction of Medicare or Medicaid fraud, relating adversely to the person's capability of owning or operating an ambulance service;

(b) Violated ORS Chapter 682 or any of these rules, which poses a significant threat to the health and safety of the public;

(c) Made a material omission or misrepresentation of facts on an application for a license or waiver, or in response to an inquiry or investigation. This includes fraud or deceit in obtaining or attempting to obtain a license or waiver or in any other transaction with the Division;

(d) Failed to employ or contract for an approved EMS Medical Director, or to operate under the direction of an EMS Medical Director appointed by an appropriate governmental authority;

(e) Failed to have medical equipment and supplies required for operation at the highest level of service provided;

(f) Lent a license or borrowed or used the license of another, or knowingly aided or abetted the improper granting of a license;

(g) Defaced, altered, removed or obliterated any portion of any official entry upon a license, licensing decal, or waiver issued by the Division;

(h) Refused to respond to or render prehospital emergency care as required by protocol because of a patient's race, sex, creed, national origin, sexual preference, age, handicap, medical problem, or financial inability to pay;

(i) Failed to promptly notify the Division of a change of ownership, or to report any matter the reporting of which is required by ORS 682.220(4);

(j) Disclosed medical or other confidential information;

(k) Altered or inappropriately destroyed medical records;

(l) Willfully prepared or filed false reports or records, or induced another to do so;

(m) Engaged in a pattern of any of the following:

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(A) Incompetence, negligence or misconduct in operating the ambulance service or in providing emergency medical care and transportation to patients;

(B) Abuse or abandonment of patients;

(C) Failure to comply with the county ASA plan, area trauma plan, or other lawfully promulgated policies, plans, or procedures;

(D) Failure to meet response time standards as prescribed by the county ASA plan or if no ASA plan is in effect, the area trauma plan;

(E) Misuse or misappropriation of medications or medical materials; and

(F) Other conduct determined by the Division to pose a significant threat to the public health and safety and the well being of ambulance patients.

(n) Failed to comply with the minimum personnel requirements or failed to have the required equipment in working order on an ambulance as prescribed in these rules;

(o) Had a continuing pattern of violations over a period of two or more years;

(p) Failed to submit a reasonable timetable to correct the violations cited by the Division;

(q) Interfered with the performance of the Division's duties; and

(r) Failed to pay all applicable licensing fees or civil penalties set by the Division.

(4) Upon receipt of a sufficient written or verbal complaint describing specific violations of ORS Chapter 682 or any other relevant statute or rule, the Division shall initiate an investigation of the allegations. The Division does not have jurisdiction over and shall not take action on complaints that relate solely to rates charged a patient by an ambulance service.

(5) When an ambulance, upon inspection by the Division, manifests evidence of a mechanical or equipment deficiency, which poses a significant threat to the health or safety of patients or crew, the Division shall immediately suspend that ambulance from operation. No ambulance that has been suspended from operation may be operated until the licensee has certified and the Division has confirmed that all of the violations have been corrected.

(6) The Division shall confirm by inspection or other appropriate means that all violations have been corrected within 48-hours of notification by the licensee. The licensee must notify the Division of corrections by personal telephone contact (voice mail messages will suffice), or facsimile, or in person during normal business hours. Notifications received by facsimile after 4:30 p.m. on a weekday or at any time on a weekend will be deemed received at 8 a.m. on the next workday. Telephonic notifications shall be deemed received at the time actual voice contact between the licensee and the Division's ambulance service licensing program representative or designee is established.

(7) In the event that a license is suspended or revoked, the licensee must cease ambulance service operations and no person except the Division may permit or cause the service to continue.

(8) The licensee must return all indications of licensing, including certificates and the remains of ambulance license decals to the Division by registered mail, posted within 48-hours of either receipt of notification of suspension or revocation or the effective date of revocation, whichever is later.

(9) The Division shall notify applicable local government, county ASA administrator, and supervising physician of the suspension or revocation of an ambulance service license, or the placing of a service on probation.

(10) The Division may assess civil penalties up to \$5000 per violation against any entity or person licensed under these rules or subject to licensure under these rules for a violation of ORS Chapter 682 or these rules.

(11) If a principal owner of an ambulance service has had its ambulance service license revoked, following the opportunity for a hearing as provided by ORS Chapter 183, that person shall not be eligible to apply for or hold an ambulance service license for a period of two years from the date of revocation as specified in ORS Chapter 682.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 7-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 11-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Ambulance Vehicle Licensing.

Adm. Order No.: PH 12-2010

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Rules Amended: 333-255-0000, 333-255-0010, 333-255-0030, 333-255-0060, 333-255-0070, 333-255-0071, 333-255-0072, 333-255-0073, 333-255-0081, 333-255-0082, 333-255-0091, 333-255-0092

Subject: The Department of Human Services, Public Health Division is permanently amending Oregon Administrative Rules chapter 333, division 255, to streamline and clarify rules pertaining to ambulance vehicle licensing.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-255-0000

Definitions

(1) "Advanced Emergency Medical Technician (AEMT)" has the meaning given that term in OAR chapter 333, division 265.

(2) "Ambulance" or "Ambulance Vehicle" means any privately or publicly owned motor vehicle, aircraft, or watercraft that is regularly provided or offered to be provided for the emergency transportation of persons who are ill or injured or who have disabilities.

(3) "Ambulance Based Clinician" means a Registered Nurse, Physician, or Physician Assistant who:

(a) Has an active license in Oregon and is in good standing with the Oregon Board of Nursing or the Oregon Medical Board; and

(b) Staffs an ambulance for a licensed ambulance service.

(4) "Ambulance Service" means any person, governmental unit, corporation, partnership, sole proprietorship, or other entity that operates ambulances and that holds itself out as providing prehospital or medical transportation to persons who are ill or injured or who have disabilities.

(5) "Ambulance Service Area (ASA)" means a geographic area served by one ground ambulance service provider, and may include all or portion of a county, or all or portions of two or more contiguous counties.

(6) "Business day" means Monday through Friday when the Division is open for business, excluding holidays.

(7) "Division" means the Oregon Public Health Division, Emergency Medical Services and Trauma System Section, within the Department of Human Services.

(8) "Emergency Care" means the performance of acts or procedures under emergency conditions in the observation, care and counsel of the ill, injured or disabled; in the administration of care or medications as prescribed by a licensed physician, insofar as any of these acts is based upon knowledge and application of the principles of biological, physical and social science as required by a completed course utilizing an approved curriculum in prehospital emergency care. However, "emergency care" does not include acts of medical diagnosis or prescription of therapeutic or corrective measures.

(9) "EMS" means Emergency Medical Services.

(10) "EMS Medical Director" has the same meaning as "Supervising Physician" in ORS 682.025.

(11) "Emergency Medical Responder" has the meaning given that term in OAR chapter 333, division 265.

(12) "Emergency Medical Technician" or "EMT" has the meaning given that term in OAR chapter 333, division 265.

(13) "EMT-Basic" has the meaning given that term in OAR chapter 333, division 265.

(14) "EMT-Intermediate" has the meaning given that term in OAR chapter 333, division 265.

(15) "EMT-Paramedic" has the meaning given that term in OAR chapter 333, division 265.

(16) "First Responder" has the meaning given that term in OAR chapter 333, division 265.

(17) "In Operation" means the time beginning with the initial response of the ambulance and ending when the ambulance is available to respond to another request for service. An ambulance that transports a patient becomes available to respond when the care of the patient has been transferred to the staff of a hospital or other health care facility.

(18) "License" means the documents issued by the Division to the owner of an ambulance service when the service and its ambulances are found to be in compliance with ORS Chapter 682, OAR chapter 333, division 250 and these rules.

(19) "Non-emergency Care" means the performance of acts or procedures on a patient who is not expected to die, become permanently disabled or suffer permanent harm within the next 24-hours, including but not limited to observation, care and counsel of a patient and the administration of medications prescribed by a physician licensed under ORS Chapter 677, insofar as any of those acts are based upon knowledge and application of the principles of biological, physical and social science and are performed

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in accordance with scope of practice rules adopted by the Oregon Medical Board in the course of providing prehospital care as defined by this rule.

(20) "Owner" means the person having all the incidents of ownership in an ambulance service or an ambulance or, where the incidents of ownership are in different persons, the person, other than a security interest holder or lessor, entitled to the possession of an ambulance vehicle or operation of an ambulance service under a security agreement of a lease for a term of 10 or more successive days.

(21) "Patient" means a person who is ill or injured or who has a disability and who is transported in an ambulance.

(22) "Person" means any individual, corporation, association, firm, partnership, joint stock company, group of individuals acting together for a common purpose, or organization of any kind and includes any receiver, trustee, assignee, or other similar representatives thereof.

(23) "Physician" means a person licensed under ORS Chapter 677, actively registered and in good standing with the Oregon Medical Board as a Medical Doctor (MD) or Doctor of Osteopathic Medicine (DO).

(24) "Physician Assistant (PA)" means a person licensed under ORS Chapter 677, actively registered and in good standing with the Oregon Medical Board.

(25) "Prehospital Care" means that care rendered by emergency medical technicians as an incident of the operation of an ambulance as defined by ORS Chapter 682 and that care rendered by emergency medical technicians as incidents of other public or private safety duties, and includes, but is not limited to "emergency care" as defined by ORS Chapter 682.

(26) "Prehospital Care Report Form (PCRF)" means a Division-approved form or electronic field data format that is completed for all patients receiving prehospital assessment, care or transportation to a medical facility.

(27) "Registered Nurse (RN)" means a person licensed under ORS Chapter 678, actively registered and in good standing with the Oregon Board of Nursing.

(28) "Sanitary" means being free from all body fluids, dirt, dust, grease or other extraneous matter.

(29) "Scope of Practice" means the maximum level of emergency or non-emergency care that an emergency medical technician may provide.

(30) "Specialty Care Transport (SCT)" means interfacility transportation of a critically injured or ill beneficiary by a ground ambulance vehicle, including medically necessary supplies and service, at a level of service beyond the scope of the EMT-Paramedic. SCT is necessary when a beneficiary's condition requires ongoing care that must be furnished by one or more health professionals in an appropriate specialty area, for example nursing, emergency medicine, respiratory care, cardiovascular care, or a paramedic with additional training. Any skill or medication in addition to or not found in the Department of Transportation curriculum for EMT-Paramedics would be defined as additional training and is defined by the EMS Medical Director.

(31) "Standing Orders" means the written detailed procedures for medical or trauma emergencies issued by the EMS Medical Director to be performed by appropriate certificate holders or licensees in conformance with the scope of practice and level of certification.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0600; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 9-1987, f. & ef. 7-21-87; HD 19-1991, f. & cert. ef. 10-18-91; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0000; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

333-255-0010

Application Process to Obtain an Ambulance License

(1) An ambulance service owner that wishes to obtain an ambulance license must apply for and receive an ambulance license from the Division before placing an ambulance into operation.

(2) The Division shall issue an ambulance license to the owner of an ambulance service that is not subject to disqualification from licensure for any reason specified in ORS Chapter 682, OAR chapter 333, division 250 or these rules. The ambulance service owner must:

- (a) Have a current ambulance service license;
- (b) Have paid the fees required by ORS Chapter 682 and these rules;
- (c) Agree to comply with all applicable federal, state and local laws and regulations governing the operation of a licensed ambulance; and
- (d) Submit a completed application in a form specified by the Division in accordance with ORS 682.045 and these rules.

(3) An application for an air ambulance license must be made on a Division-approved form containing at a minimum:

- (a) The name and address of the person or public entity owning the aircraft;
- (b) If other than the applicant's true name, the name under which the applicant is doing business;
- (c) The description of the ambulance:
 - (A) Indication if the aircraft was purchased from an ambulance service in Oregon;
 - (B) Type of aircraft:
 - (i) Fixed-wing; or
 - (ii) Rotary-wing.
 - (C) Number of engines;
 - (D) Make of aircraft;
 - (E) Model of aircraft;
 - (F) Year of manufacture;
 - (G) Federal Aviation Authority (FAA) registration number;
 - (H) Whether a major repair or alteration has been made to the aircraft, and if so, a FAA Form 337 must be on file in the licensee's office for each repair or alteration made;
 - (I) Aircraft colors:
 - (i) Fuselage;
 - (ii) Stripe; and
 - (iii) Lettering.
 - (J) Insigne name, monogram or other distinguishing characteristics. A photo of the air ambulance may be submitted to show these characteristics.
- (4) An application for a ground ambulance must be made on a Division-approved form containing at a minimum:
 - (a) The name and address of the person or public entity owning the ambulance;
 - (b) If other than the applicant's true name, the name under which the applicant is doing business;
 - (c) The description of the ambulance:
 - (A) Whether the ground ambulance was purchased from an ambulance service in Oregon;
 - (B) Make of vehicle;
 - (C) Model type of vehicle;
 - (D) Year of manufacture;
 - (E) Whether the vehicle is a remounted chassis;
 - (F) Conversion manufacturer;
 - (G) Vehicle Identification Number;
 - (H) Vehicle license plate number;
 - (I) Mileage at the time of licensing;
 - (J) Ambulance colors:
 - (i) Body;
 - (ii) Stripe; and
 - (iii) Lettering.
 - (K) Insigne name, monogram or other distinguishing characteristics. A photo of the ground ambulance may be submitted to show these characteristics.
 - (d) A copy of the ground ambulance manufacturers authenticated Star-of-Life certificate or Final Stage Vehicle Manufacturing Certification of compliance;
 - (A) A previously owned ambulance must have, at a minimum, a January 1, 1995, Star-of-Life certificate; or
 - (B) A newly constructed ambulance must have at a minimum a Star-of-Life certificate or a Final Stage Vehicle Manufacturing Certificate of compliance.
 - (5) A completed application for the licensing of a marine ambulance must contain, at a minimum:
 - (a) The name and address of the person or public entity owning the ambulance;
 - (b) If other than the applicant's true name, the name under which the applicant is doing business;
 - (c) The description of the ambulance:
 - (A) Whether the marine craft was purchased from an ambulance service in Oregon;
 - (B) Whether the patient-care area is covered or uncovered;
 - (C) Number of engines;
 - (D) Type of engines:
 - (i) Inboard;
 - (ii) Outboard; or
 - (iii) Both inboard and outboard.
 - (E) Make of marine craft;
 - (F) Model of marine craft;
 - (G) Year of manufacture;
 - (H) Marine craft registration number;

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- (I) Marine craft license plate number;
- (J) Ambulance colors:
 - (i) Hull;
 - (ii) Stripe; and
 - (iii) Lettering.
- (K) Insigne name, monogram or other distinguishing characteristics.

A photo of the marine ambulance may be submitted to show these characteristics.

(d) A signed and dated statement that the application contains truthful information.

(6) The completed ambulance license application must be submitted to the Division with a nonrefundable ambulance licensing fee of:

(a) \$45, when the service has a maximum of four full-time paid positions; and

(b) \$80, when the service has five or more full-time paid positions.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist. HD 18-1994, f. 6-30-94, cert. ef. 7-1-94; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

333-255-0030

Denial, Suspension or Revocation of an Ambulance License

(1) The Division may, in compliance with proper administrative procedures as prescribed in ORS Chapter 183, deny, suspend, or revoke an ambulance license issued under these rules, or an ambulance service license issued under OAR 333-250-0030, if the Division determines:

(a) A violation of ORS Chapter 682 or of these rules has occurred that poses a significant threat to the health and safety of the public or an applicant does not meet the requirements of ORS Chapter 682 or these rules;

(b) The ambulance owner makes a material omission or misrepresentation of facts on an application for a license or waiver, or in response to an inquiry or investigation. This includes the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact or any other means by which misinformation or false impression is knowingly given or deceit in obtaining or attempting to obtain a license or waiver or in any other transaction with the Division;

(c) Defacing, altering, removing or obliterating any portion of any official entry upon a license, licensing decal, or waiver issued by the Division;

(d) Failure to have the appropriate personnel, medical equipment and supplies required for operation at the highest level of service provided when the ambulance is in operation as prescribed by these rules;

(e) When an ambulance, upon inspection by the Division, manifests evidence of a mechanical or equipment deficiency that poses a significant threat to the health or safety of patients or crew, the Division shall immediately suspend that ambulance from operation. No ambulance that has been suspended from operation may be operated as an ambulance until the licensee has certified and the Division has confirmed that the deficiency has been corrected; and

(f) Other reasons determined by the Division to pose a significant threat to the Division and safety and the well being of patients.

(2) The licensee must return all indications of licensing, including certificates and the remains of ambulance license decals to the Division by registered mail, posted within 48-hours of either receipt of notification of suspension or revocation or the effective date of revocation, whichever is later.

(3) The Division must provide appropriate public notification of the suspension or revocation of an ambulance license.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist. HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0006; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

333-255-0060

Ground Ambulance Construction Criteria

(1) The construction criteria for a new ground ambulance shall comply with June 1, 2008 Federal Specifications for the Star-of-Life Ambulance Certification. Copies of the specifications are available through the Division.

(2) The construction criteria for a previously owned ambulance must comply with the November 1, 1994 Federal Specifications for the Star-of-Life Ambulance Certification, or standards as defined by the Final Stage Vehicle Manufacturing Certification of compliance. Copies of the specifications are available through the Division.

(3) The construction criteria for remounting a Type I or Type III ambulance is:

(a) The patient compartment must have been built after November 1, 1994; and

(b) The remounting must be done by a recognized ambulance manufacturer, a recognized vehicle modifier, a remount center, or licensee with an established in-house remount program. The agency doing the remounting must utilize current nationally recognized vehicle modification techniques and industry standard parts and components. The agency doing remounting shall provide a notarized statement that the structural integrity of the specific patient compartment was not compromised during the remounting, and the remounting has not invalidated the Star-of-Life Certification or Final Stage Vehicle Manufacturing Certificate of compliance.

(4) A licensee may establish an in-house remount program by obtaining the necessary training, appropriate equipment and facilities to remount a vehicle to the described standard.

(5) The owner of an ambulance must select an exterior color, emblems, and markings for the ambulance that will ensure the prompt recognition of that vehicle as an ambulance. All ambulance vehicles shall be clearly identified by appropriate emblems and markings on the front, side, roof, and rear of the vehicle.

(a) The size, number and locations of the "Star-of-Life" emblems are:

(A) Sides — a 12 to 16-inch emblem must be located on the left and right side panels.

(B) Roof — a 32-inch emblem must be located on the roof.

(b) The size, number and locations of the word "AMBULANCE" are:

(A) Front — centered, in block letters, not less than four inches high, must be in mirror image and centered above the grille;

(B) Rear — in block letters of not less than six-inches in height and centered on the rear door panels or an approved alternative; and

(C) Acceptable alternatives for the word "AMBULANCE" includes generic terms that do not connote any particular level of service, limited to "MEDIC UNIT", "FIRE MEDIC UNIT", "EMERGENCY MEDICAL SERVICES", "EMS UNIT" or other phrases as the Division, in its sole discretion, may permit.

(c) The locations of additional markings are:

(A) An ambulance shall display the service or organization name or logo on the vehicle;

(B) An ambulance may not display on its exterior any level of service which is not provided at all times when that ambulance is in operation.

(6) An ambulance in operation and a reserve ambulance must be reasonably equipped and maintained, and maintenance records must be kept and made available for inspection by the Division. An ambulance must be equipped with the following items in satisfactory working condition:

(a) Audio/visual devices must be in compliance with the Star-of-Life Certification or the Final Stage Vehicle Manufacturing Certificate of compliance;

(b) An ambulance shall comply with Federal Motor Vehicle Safety Standards (FMVSS) and Department of Transportation (DOT) vehicle equipment standards for the ambulance at the time of manufacture;

(c) In case of dual batteries, batteries located in the engine compartment must have heat shields. If the batteries are located elsewhere, they must be sealed off from the occupants' compartment in a ventilated area.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0655; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0055; OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

333-255-0070

Ground Ambulance Operating Requirements

(1) In order to operate a ground ambulance a licensee shall:

(a) Have a driver that meets the qualifications in OAR chapter 333, division 250;

(b) Have emergency medical responders, emergency medical technicians or other qualified licensed health care professionals staffing the ambulance, as required by OAR chapter 333, division 250.

(c) Ensure that the appropriate equipment is available and in satisfactory working condition, stored in a sanitary and secure manner that protects the viability and safe operation of medications and equipment, including but not limited to:

(A) Installed medical oxygen cylinder with a capacity of at least 3,000 liters and having not less than 500 psi;

(i) The installed medical oxygen cylinder must be located in a vented compartment; and

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(ii) The compartment shall not be utilized for storage of any non-secured equipment. No combustible items shall be stored in the oxygen compartment.

(B) Oxygen pressure regulator:

(i) The oxygen must be delivered by a single-stage regulator which is set to at least 50 psi;

(ii) The pressure regulator controls must be accessible from inside the patient compartment; and

(iii) The pressure regulator or other display must be visible from inside the patient compartment.

(C) Oxygen flow meter, mounted — 2:

(i) The flow meter must be readable from the EMT seat and squad bench; and

(ii) The flow meter must be adjustable over a minimum range of 0 to 15 liters per minute.

(D) Portable medical oxygen cylinder with a capacity of at least 300 liters and having not less than 500 psi:

(i) The oxygen must be delivered by a yoke regulator with a pressure gauge and non-gravity-dependent flow meter that is visible and accessible to the medical personnel; and

(ii) The flow meter must be adjustable over a minimum range of 0 to 15 liters per minute.

(E) Spare portable oxygen cylinder that is full, tagged, sealed and securely mounted;

(F) Oxygen non-rebreathing masks with tubing:

(i) Pediatric — 2; and

(ii) Adult — 3.

(G) Oxygen nasal cannula with tubing that are transparent and disposable, adult — 3;

(H) Bag-valve-mask ventilation device with reservoir. The device must:

(i) Have a standard universal adapter;

(ii) Be operable with or without an oxygen supply;

(iii) Be manually operated and self-refilling; and

(iv) Have bag-valve-mask ventilation devices with reservoir that are transparent and semi-rigid in assorted sizes to include adult, child, and newborn/infant.

(I) Pharyngeal esophageal airway devices in assorted sizes with agency Supervising Physician approval;

(J) Oxygen Saturation Monitor;

(K) Endtidal CO₂ detection device in assorted sizes;

(L) Oropharyngeal airways in assorted sizes to include adult, child, and newborn/infant;

(M) Nasopharyngeal airways in assorted sizes;

(N) Two suction apparatus. Suction apparatus:

(i) Shall be electrically powered or battery powered with pressure regulator.

(ii) If battery powered, shall have enough back-up batteries to maintain suction during routine transport.

(O) Adequate supply of wide-bore tubing, commercial rigid pharyngeal curved suction tips and flexible suction catheters sized from infant to adult;

(P) Collection canisters, either disposable or sealable liners, with adequate capacity.

(Q) Cardiac monitoring equipment including, at a minimum, a portable battery operated automatic or semi-automatic defibrillator (AED), with pediatric capabilities and sufficient pediatric accessories for proper operation on a pediatric patient.

(R) A wheeled stretcher:

(i) Capable of securely fastening to the ambulance body;

(ii) Having a minimum of three restraining devices and an upper torso (over the shoulder) restraint;

(iii) Containing a standard size waterproof foam mattress; and

(iv) Capable of having the head of the stretcher tilted upwards to a 60-degree semi-sitting position.

(S) At least one folding stretcher, the number required based on the stretcher-carrying capacity of the ambulance, or an additional long backboard:

(i) Capable of securely fastening to the squad bench when carrying a patient; and

(ii) Having a minimum of three restraining devices and an upper torso (over the shoulder) restraint.

(T) Fracture immobilization equipment, including but not limited to:

(i) Traction splints in assorted adult sizes and/or adult child combination;

(ii) Extremity splints in assorted sizes;

(iii) Extrication collars in assorted pediatric through adult sizes;

(iv) Scoop stretcher, folding or non-folding type with necessary restraining devices with sufficient supplies for head immobilization;

(v) Short backboard or equivalent with necessary restraining devices with sufficient supplies for head immobilization;

(vi) Long backboard with necessary restraining devices with sufficient supplies for head immobilization;

(vii) Pediatric backboard with necessary restraining straps with sufficient supplies for head immobilization;

(viii) Bandages and dressings in assorted sizes, sterile and non-sterile; and

(ix) Adhesive or hypo-allergenic tape in assorted sizes.

(U) Miscellaneous equipment, including but limited to:

(i) Emesis containers;

(ii) Stethoscope, pediatric and adult;

(iii) Aneroid sphygmomanometer in assorted sizes;

(iv) Bandage shears;

(v) Hypothermia thermometer;

(vi) Disposable obstetrical kit;

(vii) Chemical heat and cold packs assorted;

(viii) Urinals, female and male, one each;

(ix) Bedpan;

(x) Set of extremity restraining devices;

(xi) Blood glucose level testing kit or blood glucose level test strips;

(xii) Medications and fluids authorized for Basic Life Support use as required by the EMS Medical Director; and

(xiii) Linen supplies and replacements sufficient to cover wheeled stretchers.

(V) Personal protection equipment sufficient for crew and patient(s), including but not limited to:

(i) Non-latex disposable gloves;

(ii) Disposable face masks;

(iii) Protective eyewear;

(iv) Disposable isolation gowns;

(v) Commercial antimicrobial hand cleanser;

(vi) Surface cleaning disinfectant;

(vii) Sharps container for the patient care compartment and a separate container for each kit that contains needles; and

(viii) Infectious waste disposal bags.

(W) Security and rescue equipment, including but not limited to:

(i) Fire extinguisher, 5lb. (2A-10BC type) — mounted and readily accessible in either the driver's or patient compartment;

(ii) Road flares, red colored chemical lights, the number and burning time to equal at least 180 minutes, or a minimum of six reflective triangles;

(iii) Flashlight;

(iv) Leather gloves sufficient for crew;

(v) Reflective vests for each crew member;

(vi) HEPA mask for each crew member; and

(vii) Adequate extrication equipment for agencies that provide initial response without the response of other rescue apparatus or equipment.

(X) The 2008 Department of Transportation Emergency Response Guidebook, (Initial Response to Hazardous Materials Incidents);

(Y) Triage tags — 25;

(Z) Oregon Trauma Systems Identification Bracelets — 5;

(AA) Prehospital Care Report Forms or electronic field data form;

(BB) A copy of BLS standing orders for dated within one year and signed by the EMS Medical Director;

(CC) A universal "No Smoking" sign conspicuously displayed in the driver's and patient compartment; and

(DD) A universal "Fasten Seatbelt" sign conspicuously displayed in the driver's compartment.

(2) An ambulance shall have two-way radio communication equipment to provide reliable contact between the ambulance and central dispatch, the receiving hospital, and online medical direction.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist. HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0650; HD 14-1981(Temp), f. & ef. 8-7-81; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 9-1987, f. & ef. 7-21-87; HD 19-1991, f. & cert. ef. 10-18-91, Former 333-028-0050(3) Renumbered to 333-028-0051, former 333-028-0050(4) & (5) Renumbered to 333-028-0052; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0050; OHD 5-2001, f. & cert. ef. 2-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

ADMINISTRATIVE RULES

333-255-0071

Ground Ambulance Operating Requirements When Providing Intermediate Level Care

(1) A ground ambulance in operation and providing intermediate life support care must have a minimum staff of two certified emergency medical technicians:

(a) A driver who complies with the requirements specified in OAR chapter 333, division 250; and

(b) A person who is at or above the Advanced Emergency Medical Technician or EMT-Intermediate certification level must be in the patient compartment when a patient is receiving intermediate level life support care. If the driver is not a certified EMT, then a second EMT, Basic or above, must be available for patient care both in the ambulance and on scene.

(2) A ground ambulance in operation and providing intermediate level care must have the following items in satisfactory working condition, kept in a sanitary manner, stored in a secure manner and be readily accessible to the medical personnel:

(a) All items specified in OAR 333-255-0070;

(b) Cardiac Monitoring Equipment:

(A) A portable battery powered manual monitor defibrillator capable of recording ECG reading;

(B) ECG electrodes, adult and pediatric;

(C) Hands-free defibrillation patches, adult and pediatric or defibrillation paddles, adult and pediatric;

(D) Contact gel if using paddles;

(E) Patient cables — 2; and

(F) ECG paper.

(c) Any physiologic isotonic crystalloid solution or combinations thereof — 6000 cc in any size containers;

(d) Medications and fluids authorized for use by an EMT-Advanced or Intermediate as required by the EMS Medical Director. Storage of controlled substances in an ambulance must adhere to the signed and dated procedures as specified in OAR 333-250-0047(3)(a) and (b);

(e) Vascular access devices:

(A) Over-the-needle catheters in assorted sizes 24-gauge through 14-gauge; and

(B) Specifically-designed needles or device with needles for intraosseous infusions.

(f) A copy of standing orders for EMT-Advanced or Intermediates dated within one year and signed by the EMS Medical Director.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

333-255-0072

Ground Ambulance Operating Requirements When Providing Advanced Level Care

(1) A ground ambulance in operation and providing advanced life support level care must have a minimum staff of two persons:

(a) A driver who complies with the requirements specified in OAR chapter 333, division 250; and

(b) A person who is at the EMT-Paramedic certification level, or an RN, PA or physician who is trained in prehospital emergency medical care must be in the patient compartment when a patient is receiving advanced life support care. If the driver is not a certified EMT, then a second EMT, Basic or above, must be available for patient care both in the ambulance and on scene. The EMT, RN, PA or physician must:

(A) Not have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(B) Not be taking any medications that could impair the giving of proper patient care.

(c) When a RN, PA or physician is staffing an ambulance in lieu of an EMT-Paramedic and providing advanced level life support care he or she must have:

(A) A current American Heart Association "Health Care Provider," American Red Cross "Basic Life Support for the Professional Rescuer" or other Division-approved equivalent CPR course completion document;

(B) A current Advanced Cardiac Life Support course or other Division-approved equivalent completion document;

(C) A pediatric advanced life support course or other Division-approved equivalent completion document;

(D) A Prehospital Trauma Life Support, Basic Trauma Life Support, Trauma Emergency Assessment Management or Trauma Nurse Core Course completion document. The Trauma Emergency Assessment

Management and Trauma Nurse Core Course must include a supplemental prehospital rapid extrication training session; and

(E) The ability to properly assist in extricating, lifting and moving a patient.

(2) Advanced life support patient care equipment. A ground ambulance in operation and providing advanced level care must have the following advanced life support equipment in satisfactory working condition, kept in a sanitary manner and which is readily accessible to medical personnel:

(a) All items specified in OAR 333-255-0070;

(b) Nasogastric tubes in assorted sizes;

(c) Cardiac monitoring equipment as specified in OAR 333-255-0071(2)(b);

(d) Advanced airway care equipment:

(A) Laryngoscope handle and assorted blade sizes, adult and pediatric;

(B) Spare dated batteries for the laryngoscope handle;

(C) Spare bulbs for the laryngoscope blades;

(D) Endotracheal tubes in assorted sizes, adult and pediatric;

(E) Magill Forceps — adult and child;

(F) Intubation stylettes — adult and child;

(G) Endtidal CO2 detection device;

(H) Oxygen saturation monitor; and

(I) Chest decompression equipment.

(e) Sterile intravenous agents and medications authorized by the EMS Medical Director;

(f) Vascular access devices:

(A) Over-the-needle catheters in assorted sizes 24-gauge through 14-gauge; and

(B) Specifically-designed needles or device designed for intraosseous infusions.

(g) Storage of controlled substances in an ambulance must adhere to the signed and dated procedures as specified in OAR 333-250-0047(3)(a) and (b); and

(h) A copy of standing orders for paramedics or ambulance based clinicians dated within one year and signed by the EMS Medical Director.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

333-255-0073

Ground Ambulance Operating Requirements When Providing Only Specialty Level Care

(1) A ground ambulance in operation and providing only specialty level care during inter-facility transfers must have a minimum staff of two qualified persons as defined by the Center for Medicare Services or additional staff, the number and type, requested by the transferring physician:

(a) A driver who complies with the requirements specified in OAR chapter 333, division 250; and

(b) A person who is at the EMT-Paramedic certification level, RN, PA, physician or other qualified persons who have additional specialty care training and who must be in the patient compartment when a patient is receiving specialty level care.

(2) The EMT-Paramedics, RNs, PAs, physicians or other qualified persons must have the:

(a) Training to properly operate all patient care equipment carried on an ambulance, including specialty care equipment necessary to care for the patient during the transfer;

(b) Training to do titration of intravenous medications necessary to care for the patient during transfer; and

(c) Ability to properly assist in lifting and moving a patient.

(3) The personnel staffing an ambulance must not:

(a) Have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(b) Be taking any medications that could impair the giving of proper patient care.

(4) A ground ambulance in operation and providing only specialty level care must have the following patient care equipment in a satisfactory working condition, stored in a sanitary and secure manner, and be readily accessible to the medical personnel:

(a) All patient care equipment specified in OAR 333-255-0072; and

(b) Any other patient care equipment or supplies anticipated or required for patient care.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017 - 682.117, 682.991

Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

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333-255-0081

Air Ambulance Operating Requirements for Prearranged Inter-Facility Transfers

(1) Fixed-wing aircraft in operation and providing pre-arranged inter-facility transfers requiring basic level care must have a minimum staff of two persons:

(a) A pilot adhering to all regulations set forth in FAA Part 135 for air medical transport; and

(b) One EMT-Paramedic, RN, PA or physician having:

(A) Documentation that at least one member of the medical crew has successfully completed the 2004 Association of Air Medical Services (AAMS) Curriculum Guidelines or equivalent. The curriculum must include emergency care procedures, aircraft safety and altitude physiology. There must be written documentation of an annual review of the Air Medical Crew course material. The length and content of the review must be established by the EMS Medical Director and be kept on file with the ambulance service;

(B) A current American Heart Association "Health Care Provider", American Red Cross "Basic Life Support for the Professional Rescuer" or other Division-approved equivalent CPR course completion document;

(C) The ability to properly assist in lifting and moving a patient; and

(D) The knowledge to properly operate all patient care equipment that may be used.

(2) Fixed or rotary-wing aircraft in operation and providing pre-arranged inter-facility transfers requiring advanced life support care must have a minimum staff of two persons:

(a) A pilot adhering to all regulations set forth in FAA Part 135 for air medical transport; and

(b) One EMT-Paramedic, RN, PA or physician meeting the requirements specified in paragraph (1)(b)(A) through (1)(b)(D) of this rule.

(3) Fixed or rotary-wing aircraft in operation and providing pre-arranged inter-facility transfers requiring specialty level care must have a minimum staff of two persons:

(a) A pilot adhering to all regulations set forth in FAA Part 135; and

(b) One EMT-Paramedic, RN, PA, physician or other qualified person(s), who must:

(A) Meet the requirements specified in paragraph (1)(b)(A) through (1)(b)(D) of this rule;

(B) Have documentation of completing additional specialty care training as defined by the EMS Medical Director;

(C) Have training to properly operate specialty care equipment necessary to care for the patient during the transfer; and

(D) Have training to do titration of intravenous medications necessary to care for the patient during the transfer.

(4) An air ambulance in operation and providing specialty level care must have the following patient care equipment in a satisfactory working condition, stored in a sanitary and secure manner, and be readily accessible to the medical personnel:

(a) All patient care equipment specified in subsection (7)(a) through (7)(k) of this rule;

(b) All patient care equipment specified in OAR 333-255-0082(2)(d) through (2)(i); and

(c) Any other patient care equipment required during the transfer.

(5) When an inter-facility transfer is requested, a representative from the ambulance service must contact the attending physician at the sending facility, prior to the transfer, to determine which type of aircraft; fixed-wing, rotary-wing, pressurized or non-pressurized, is needed based on the patient's medical condition and which additional equipment and personnel are required.

(6) Patient Care Equipment. The following patient care equipment, in satisfactory working condition and kept in a sanitary manner, is required on all air ambulance flights. The equipment may be kept separate from the aircraft in modular pre-packaged form, so as to be available for rapid loading, easy securing and easy access aboard the aircraft:

(a) Medical oxygen cylinders and regulators:

(A) Medical oxygen cylinder with a capability of at least 600 liters and having not less than 500psi:

(i) The oxygen cylinder(s) must be securely fastened to the aircraft while in flight;

(ii) The oxygen must be delivered by a yoke regulator with a pressure gauge and a non-gravity-dependent flowmeter that is visible and accessible to the medical personnel; and

(iii) The flowmeter must be adjustable over a minimum range of 0 to 15 liters per minute.

(B) A spare portable oxygen cylinder that is full, tagged, sealed, and securely mounted.

(b) Medical oxygen administration equipment:

(A) Oxygen non-rebreathing masks with tubing:

(i) Pediatric — 2; and

(ii) Adult — 2.

(B) Oxygen nasal cannula with tubing that are transparent and disposable, adult -2;

(C) Bag-valve-mask ventilation device with reservoir. The device must:

(i) Have a standard universal adapter (15 mm tracheal tube/22 mm mask);

(ii) Be operable with or without an oxygen supply;

(iii) Be manually operated and self-refilling;

(iv) Have valves that operate effectively at temperatures down to 0° F;

(v) Have bag-valve-mask ventilation devices with reservoir that are transparent and semi-rigid in assorted sizes to include adult, child, and newborn/infant.

(c) Airway maintenance devices:

(A) Pharyngeal esophageal airway devices in assorted sizes;

(B) Endtidal CO2 detection device in assorted sizes;

(C) Oropharyngeal airways in assorted sizes to include adult, child, and newborn/infant; and

(D) Nasal airways in assorted sizes.

(d) Suction equipment:

(A) Portable suction aspirator:

(i) The unit must be either a self-contained battery or oxygen-powered unit that can operate continuously for 20 minutes and is rechargeable or be a manually-powered unit;

(ii) The unit must be capable of developing a minimum vacuum of 300 mm Hg within four seconds after the suction tube is closed;

(iii) The unit must provide a free air flow of at least 20 liters per minute;

(iv) The unit must be adjustable for use on children and intubated patients;

(v) The unit must include at least a 300 ml collection bottle; and

(vi) A secondary suction apparatus.

(B) Suction connecting tubing and catheters:

(i) Suction connecting tubing that is at least one-quarter of an inch in diameter, translucent and will not kink or collapse under high suction -2; and

(ii) Suction catheters in assorted sizes and types for adult, child, and newborn/infant.

(e) Stretcher. The stretcher must:

(A) Be securely fastened to the aircraft in accordance with FAA Part 135; and

(B) Have a minimum of three restraining devices and an upper torso (over the shoulder) restraint.

(f) Miscellaneous equipment:

(A) Emesis containers;

(B) Stethoscope, adult and pediatric;

(C) Aneroid sphygmomanometer in assorted sizes;

(D) Bandage shears;

(E) Hypothermia thermometer;

(F) Chemical heat and cold packs, assorted;

(G) Blood glucose level testing kit or blood glucose level test strips;

(H) Urinals, female and male, one each;

(I) Bed pan (Exempt from rotary-wing aircraft); and

(J) Set of extremity restraining devices.

(g) Personal protection equipment sufficient for crew and patient(s) including:

(A) Disposable gloves;

(B) Disposable face masks;

(C) Protective eyewear;

(D) Disposable isolation gowns;

(E) Hand cleaning solution or foam;

(F) Surface cleaning disinfectant;

(G) Sharps container for each kit that contains needles; and

(H) Infectious waste disposal bags.

(h) Linen supplies and replacements to cover stretcher;

(i) Prehospital Care Report Form or electronic field data form;

(j) A copy of standing orders for EMTs, RNs and PAs dated within one year and signed by the EMS Medical Director; and

(k) A universal "No Smoking" sign must be conspicuously displayed in the cockpit and patient compartment.

Stat. Auth.: ORS 682.017

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Stats. Implemented: ORS 682.017 - 682.117, 682.991
Hist.: OHF 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

Stat. Auth.: ORS 682.017
Stats. Implemented: ORS 682.017 - 682.117, 682.991
Hist.: OHF 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

333-255-0082

Air Ambulance Operating Requirements for Scene Response

(1) Rotary-wing aircraft in operation and providing scene response care must have a minimum staff of two persons:

- (a) A pilot adhering to all regulations set forth in FAA Part 135; and
- (b) One EMT-Paramedic, RN, PA, or physician having:

(A) Documentation that at least one member of the medical crew successfully completed the 2004 Association of Air Medical Services (AAMS) Curriculum Guidelines or equivalent. The curriculum must include emergency care procedures, aircraft safety and altitude physiology. There must be written documentation of an annual review of the Air Medical Crew course material. The length and content of the review must be established by the EMS Medical Director and be kept on file with the ambulance service;

(B) The ability to properly assist in extricating, lifting and moving a patient; and

(C) The knowledge to properly operate all patient care equipment that may be used.

(2) The following prehospital scene patient care equipment is required on all prehospital scene responses:

(a) All patient care equipment specified in OAR 333-255-0081(7)(a) through (7)(k);

(b) Fracture immobilization equipment:

(A) Traction splints in assorted adult and/or adult-child combination;

(B) Extremity splints in assorted sizes;

(C) Extrication collars in assorted pediatric through adult sizes;

(D) Short backboard or equivalent with necessary restraining devices with sufficient supplies for head immobilization;

(E) Long backboard with necessary restraining devices with sufficient supplies for head immobilization;

(F) Scoop stretcher with necessary restraining devices with sufficient supplies for head immobilization; and

(G) Pediatric backboard with necessary restraining devices with sufficient supplies for head immobilization.

(c) Bandages and dressings in assorted sizes, sterile and non-sterile;

(d) Adhesive or hypo-allergenic tape in assorted sizes;

(e) Cardiac monitoring equipment:

(A) Manual monitor/defibrillator;

(B) Monitoring electrodes, infant and adult;

(C) Patient cables — 2; and

(D) ECG paper.

(f) Advanced airway care equipment:

(A) Laryngoscope handle and assorted blade sizes, adult and pediatric;

(B) Spare dated batteries for the laryngoscope handle;

(C) Spare bulbs for the laryngoscope blades;

(D) Endotracheal tubes in assorted sizes, adult and pediatric;

(E) Magill Forceps, child and adult;

(F) Intubation stylettes, child and adult;

(G) Endtidal CO₂ detection device;

(H) Oxygen saturation monitor; and

(I) Chest decompression kit;

(g) Sterile intravenous agents and medications authorized by the EMS

Medical Director;

(h) Vascular access devices:

(A) Over-the-needle catheters in assorted sizes 24-gauge through 14-gauge; and

(B) Specifically-designed needles for intraosseous infusions.

(i) Nasogastric tubes in assorted sizes;

(j) Storage of controlled substances in an ambulance must adhere to the signed and dated procedures as specified in OAR 333-250-0047(3)(a) and (3)(b);

(k) Oregon Trauma System's Identification Bracelets — 5;

(l) Miscellaneous equipment:

(i) The 2008 Department of Transportation Emergency Response Guidebook (Initial Response to Hazardous Materials Incidents); and

(ii) A copy of standing orders for EMT-Paramedics, RNs and PAs dated within one year and signed by the EMS Medical Director.

(3) In a prehospital resuscitation, when no other practical means of transportation, including any other properly equipped license-holder, is reasonably available, a license-holder may deviate from the rules to the extent necessary to meet the rescue situation.

333-255-0091

Marine Ambulance Operating Requirements When Providing Basic Level Care

(1) A marine ambulance in operation and providing basic level care must have a staff of at least two persons:

(a) An operator, who:

(A) Has a valid US Coast Guard pilot's license;

(B) Operates the marine ambulance in compliance with any applicable marine craft statutes;

(C) Has not consumed any alcoholic beverages in the eight hours prior to operating an ambulance; and

(D) Is not taking any medications that could impair the safe operation of the ambulance.

(b) A person who is at or above the EMT-Basic certification level who must be with the patient at all times. The EMT attending the patient must:

(A) Not have consumed any alcoholic beverages in the eight hours prior to working on an ambulance; and

(B) Not be taking any medications that could impair the giving of proper patient care.

(c) If the operator is not a certified EMT, the operator must meet the requirements specified in paragraphs (1)(a)(A) through (1)(a)(D) of this rule and have:

(A) A copy of certificate of course completion that the non-EMT operator has demonstrated knowledge and skills in the performance of one and two-person rescuer cardiopulmonary resuscitation (adult, child and infant) and relief of foreign body airway obstruction. The course must meet the 2005 American Heart Association guidelines for cardiopulmonary resuscitation and emergency cardiac care or equivalent standards approved by the Division.

(B) A signed statement by the operator that he or she is not addicted to alcohol or controlled substances;

(C) A signed statement by the operator that he or she is free from any physical or mental defect that could impair the ability to operate an ambulance; and

(D) A signed statement by the training officer that the operator has the ability to properly assist in extricating, lifting and moving a patient.

(2) Basic life support care equipment. A marine ambulance in operation and providing basic level care must have the following patient care equipment in a satisfactory working condition, kept in a sanitary manner, stored in a secure manner and be readily accessible to the medical personnel:

(a) Medical oxygen cylinders and regulators:

(A) Medical oxygen cylinder with a minimum capacity of 600 liters;

(i) The oxygen must be delivered by a yoke regulator with a pressure gauge and a non-gravity-dependent flowmeter that is visible and accessible to the medical personnel; and

(ii) The flowmeter must be adjustable over a minimum range of 0 to 15 liters per minute.

(B) A spare portable oxygen cylinder that is full, tagged, sealed and securely mounted.

(b) Medical oxygen administration equipment:

(A) Oxygen non-rebreathing masks with tubing.

(i) Pediatric — 2; and

(ii) Adult — 2.

(B) Oxygen nasal cannulas with tubing that are transparent and disposable, adult — 2;

(C) Bag-valve-mask ventilation device with reservoir. The device must:

(i) Have a standard universal adapter (15 mm tracheal tube/22 mm mask);

(ii) Be operable with or without an oxygen supply;

(iii) Be manually operated and self-refilling;

(iv) Have valves that operate effectively at temperatures down to 0° F; and

(v) Have bag-valve-mask ventilation devices with reservoir that are transparent and semi-rigid in assorted sizes to include adult, child, and newborn/infant.

(c) Airway maintenance devices:

(A) Pharyngeal esophageal airway devices in assorted sizes if the EMS Medical Director approved use;

(B) Endtidal CO₂ detection device in assorted sizes;

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- (C) Oropharyngeal airways in assorted sizes to include adult, child and newborn/infant; and
- (D) Nasal airways in assorted sizes.
- (d) Suction equipment:
 - (A) Portable suction aspirator:
 - (i) The unit must be either a self-contained battery or oxygen-powered unit that can operate continuously for 20 minutes and is rechargeable or be a manually-powered unit;
 - (ii) The unit must be capable of developing a minimum vacuum of 300 mm Hg within four seconds after the suction tube is closed;
 - (iii) The unit must provide a free air flow of at least 20 liters per minute;
 - (iv) The unit must be adjustable for use on children and intubated patients;
 - (v) The unit, including at least a 300 ml collection bottle; and
 - (vi) A secondary suction apparatus.
 - (B) Suction connecting tubing and catheters:
 - (i) Suction connecting tubing that is at least one-quarter of an inch in diameter, translucent and will not kink or collapse under high suction — 2; and
 - (ii) Suction catheters that are in assorted sizes and types for adult, child and newborn/infant.
- (e) Cardiac monitoring equipment: Automatic or semi-automatic defibrillator. The unit must be capable of operating independently of an electrical outlet, and delivering a total defibrillation energy sufficient to meet the number of shocks and power settings prescribed in the EMS Medical Director 's standing orders and be inclusive of the 2005 American Heart Association guidelines for emergency cardiac care or equivalent standards as approved by the Division.
 - (f) Stretcher. The stretcher must:
 - (A) Be a plastic or metal basket stretcher with a four-point bridle;
 - (B) Have a locking mechanism which can be securely fastened to the craft below the gunwale level; and
 - (C) Have a minimum of four restraining devices, one of which shall be a torso (over the shoulder) restraint.
 - (g) Fracture immobilization equipment:
 - (A) Traction splints in assorted adult sizes and/or adult/child combination;
 - (B) Extremity splints in assorted sizes;
 - (C) Extrication collars in assorted pediatric through adult sizes;
 - (D) Short backboard or equivalent with necessary restraining devices with sufficient supplies for head immobilization;
 - (E) Long backboard with necessary restraining devices with sufficient supplies for head immobilization; and
 - (F) Pediatric backboard with necessary restraining devices with sufficient supplies for head immobilization.
 - (h) Bandages and dressings in assorted sizes, sterile and non-sterile;
 - (i) Adhesive or hypo-allergenic tape in assorted sizes;
 - (j) Miscellaneous equipment:
 - (A) Emesis containers;
 - (B) Stethoscope, pediatric and adult;
 - (C) Aneroid sphygmomanometer in assorted sizes;
 - (D) Bandage shears;
 - (E) Hypothermia thermometer;
 - (F) Disposable obstetrical kit;
 - (G) Chemical heat and cold packs assorted;
 - (H) Urinals, female and male, one each;
 - (I) Bed pan;
 - (J) Set of extremity restraining devices; and
 - (K) Blood glucose level testing kit or blood glucose level testing strips.
 - (k) Personal protection equipment sufficient for crew and patient(s) including:
 - (A) Disposable gloves;
 - (B) Disposable face masks;
 - (C) Protective eyewear;
 - (D) Disposable isolation gowns;
 - (E) Hand cleaning solution or foam;
 - (F) Surface cleaning disinfectant;
 - (G) Sharps container for the patient compartment and a separate container for each kit that contains needles;
 - (H) Infectious waste disposal bags; and
 - (I) The 2008 Department of Transportation — Emergency Response Guidebook (Initial Response to Hazardous Materials Incidents.)

- (L) Medications and fluids authorized for use by an EMT-Basic as required by the EMS Medical Director;
 - (m) Linen supplies and replacements sufficient to cover stretchers;
 - (n) Communication equipment. Communications equipment must consist of a VHF/FM marine radio with at least 25 watts of power. In addition, the radio must have the capability to have reliable contact between the marine ambulance and a ground or air ambulance and with a hospital having online medical direction;
 - (o) Prehospital Care Report Form or electronic field data;
 - (p) Oregon Trauma System Identification Bracelets — 5;
 - (q) A copy of standing orders for EMT-Basics dated within one year and signed by the EMS Medical Director; and
 - (r) A universal “No Smoking” sign conspicuously displayed in the pilot’s and patient area.
- Stat. Auth.: ORS 682.017
Stats. Implemented: ORS 682.017 - 682.117 & 682.991
Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

333-255-0092 Marine Ambulance Operating Requirements When Providing Intermediate Level Care

- (1) A marine ambulance in operation and providing intermediate life support care must have a minimum staff of two persons:
 - (a) An operator who complies with the requirements specified in OAR 333-255-0091(1)(a)(A) through (1)(a)(D) or (1)(c)(A) through (1)(c)(D); and
 - (b) A person who is at or above the EMT-Intermediate certification level and who must be with the patient at all times. If the operator is not a certified EMT, then a second EMT, Basic or above, must be available for patient care both in the marine ambulance or on scene.
 - (2) Intermediate life support care equipment. A marine ambulance in operation and providing intermediate level care must have the following patient care equipment in a satisfactory working condition, kept in a sanitary manner, stored in a secure manner and be readily accessible to the medical personnel:
 - (a) All of the items specified in OAR 333-255-0091(2)(a) through (2)(r);
 - (b) Any physiologic isotonic crystalloid solution or combinations thereof — 6000 cc in any size containers;
 - (c) Medications and fluids authorized for use by an EMT-Intermediate as required by the EMS Medical Director;
 - (d) Vascular access devices:
 - (A) Over-the-needle catheters in assorted sizes 24 gauge through 14 gauge; and
 - (B) Specifically-designed needles for intraosseous infusions.
 - (e) A copy of standing orders for EMT-Intermediates dated within one year and signed by the EMS Medical Director.
- Stat. Auth.: ORS 682.017
Stats. Implemented: ORS 682.017 - 682.117, 682.991
Hist.: OHD 5-2001, f. & cert. ef. 4-24-01; PH 2-2007, f. & cert. ef. 2-1-07; PH 12-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Update of rules pertaining to certification of Emergency Medical Technicians and First Responders.

Adm. Order No.: PH 13-2010

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Rules Adopted: 333-265-0015, 333-265-0083, 333-265-0085, 333-265-0087, 333-265-0105

Rules Amended: 333-265-0000, 333-265-0012, 333-265-0014, 333-265-0016, 333-265-0018, 333-265-0020, 333-265-0022, 333-265-0023, 333-265-0025, 333-265-0030, 333-265-0040, 333-265-0050, 333-265-0060, 333-265-0070, 333-265-0080, 333-265-0090, 333-265-0100, 333-265-0110, 333-265-0140, 333-265-0150, 333-265-0160

Rules Repealed: 333-265-0180

Subject: The Department of Human Services, Public Health Division is making permanent changes in Oregon Administrative Rules chapter 333, division 265, to streamline and clarify rules, address requirements for training, testing and certification of first responders and EMTs, to comply with new legislation passed during the 2009 legislative session (HB 2059 and HB 3097), to prepare for upcoming curriculum changes and certification levels, and propose

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changes in fees effective on the date these rules go into effect with a gradual increase every two years until 2013.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-265-0000

Definitions

(1) “Advanced Emergency Medical Technician (AEMT or Advanced EMT)” means a person who is certified by the Division as an Advanced Emergency Medical Technician.

(2) “Ambulance Service” means any person, governmental unit, corporation, partnership, sole proprietorship, or other entity that operates ambulances and holds itself out as providing pre-hospital care or medical transportation to sick, injured or disabled persons.

(3) “Business day” is any day, Monday through Friday, from 8:00 a.m. to 5:00 p.m., except legal state holidays.

(4) “Candidate” means an applicant that has completed training in an Emergency Medical Technician (EMT) course and has not yet been certified by the Division.

(5) “Certifying officer” is a person who is responsible for conducting an Emergency Medical Technician (EMT) practical examination in a manner consistent with the standards of the National Registry for EMTs and the Division.

(6) “Clinical Experience (Clinical)” means those hours of the curriculum that synthesize cognitive and psychomotor skills and are performed under a preceptor.

(7) “Continuing Education” means education required as a condition of certification under ORS chapter 682 to maintain the skills necessary for the provision of competent pre-hospital care. Continuing education does not include attending EMS related business meetings, EMS Exhibits or Trade Shows.

(8) “Didactic Instruction” means the delivery of primarily cognitive material through lecture, video, discussion, and simulation by program faculty.

(9) “Direct Medical Oversight” means real-time direct communication by a physician who is providing direction to an EMT or First Responder during a patient encounter.

(10) “Direct Visual Supervision” means that a person qualified to supervise is at the patient’s side to monitor the EMT in training.

(11) “Division” means the Public Health Division, Emergency Medical Services and Trauma Systems Program, within the Department of Human Services.

(12) “Emergency Care” means the performance of acts or procedures under emergency conditions in the observation, care and counsel of the ill, injured or disabled; in the administration of care or medications as prescribed by a licensed physician, insofar as any of these acts is based upon knowledge and application of the principles of biological, physical and social science as required by a completed course utilizing an approved curriculum in pre-hospital emergency care. However, “emergency care” does not include acts of medical diagnosis or prescription of therapeutic or corrective measures.

(13) “EMS” means Emergency Medical Services.

(14) “EMS Medical Director” has the same meaning as “Supervising Physician” in ORS 682.025.

(15) “Emergency Medical Responder” has the same meaning as “First Responder” in ORS 682.025.

(16) “Emergency Medical Services (EMS) Agency” means any person, partnership, corporation, governmental agency or unit, sole proprietorship or other entity that utilizes emergency medical technicians or certified First Responders to provide pre-hospital emergency or non-emergency care. An emergency medical services agency may be either an ambulance service or a nontransporting service.

(17) “Emergency Medical Technician (EMT)” means a person who has received formal training in pre-hospital and emergency care and is state-certified to attend to any ill, injured or disabled person. Police officers, fire fighters, funeral home employees and other personnel serving in a dual capacity, one of which meets the definition of “emergency medical technician” are “emergency medical technicians” within the meaning of ORS chapter 682.

(18) “EMT-Basic” means a person who is certified by the Division as an EMT-Basic.

(19) “EMT-Intermediate” means a person who is certified by the Division as an EMT-Intermediate.

(20) “EMT-Paramedic” means a person who is certified by the Division as an EMT-Paramedic.

(21) “Exam Evaluator” is a person who attends an EMT practical examination and who objectively observes and records each student’s performance consistent with the standards of the National Registry of EMTs.

(22) “First Responder” means a person who has successfully completed a First Responder training course approved by the Division and:

(a) Has been examined and certified as a First Responder by an authorized representative of the Division to perform basic emergency and non-emergency care procedures; or

(b) Has been otherwise designated as a First Responder by an authorized representative of the Division to perform basic emergency and non-emergency care procedures.

(23) “Indorsement” means the manner in which a person may obtain Oregon EMT certification when that person is certified in another state and certified with the National Registry of EMTs.

(24) “In Good Standing” means a person who is currently certified or licensed in Oregon, who does not have any restrictions placed on his or her certificate or license, or who is not on probation with the certifying or licensing agency for any reason.

(25) “Non-Emergency Care” means the performance of acts or procedures on a patient who is not expected to die, become permanently disabled or suffer permanent harm within the next 24-hours, including but not limited to observation, care and counsel of a patient and the administration of medications prescribed by a physician licensed under ORS chapter 677, insofar as any of those acts are based upon knowledge and application of the principles of biological, physical and social science and are performed in accordance with scope of practice rules adopted by the Oregon Medical Board in the course of providing pre-hospital care as defined by this rule.

(26) “Patient” means a person who is ill or injured or who has a disability and who is transported in an ambulance.

(27) “Person” means any individual, corporation, association, firm, partnership, joint stock company, group of individuals acting together for a common purpose, or organization of any kind and includes any receiver, trustee, assignee, or other similar representatives thereof.

(28) “Pre-hospital Care” means that care rendered by a First Responder or EMT as an incident of the operation of an ambulance as defined by ORS chapter 682 and that care rendered by a First Responder or EMT as an incident of other public or private safety duties, and includes, but is not limited to “emergency care” as defined by ORS chapter 682.

(29) “Preceptor” means a person approved by an accredited teaching institution and appointed by the EMS Agency, who supervises and evaluates the performance of an EMT student during the clinical and field internship phases of an EMT course. A preceptor must be a physician, physician assistant, registered nurse, or EMT with at least two years field experience in good standing at or above the level for which the student is in training.

(30) “Scope of Practice” means the maximum level of emergency or non-emergency care that an EMT may provide that is set forth by the rules adopted by the Oregon Medical Board.

(31) “Skills Lab” means those hours of the curriculum that provides the student with the opportunity to develop the skills for the level of training obtained.

(32) “Standing Orders” means the written protocols that an Emergency Medical Technician or First Responder follows to treat patients when direct contact with a physician is not maintained.

(33) “Successful completion” means having attended 85 percent of the didactic and skills instruction hours (or makeup sessions) and 100 percent of the clinical and field internship hours, and completing all required clinical and internship skills and procedures and meeting or exceeding the academic standards for those skills and procedures.

(34) “Teaching Institution” means a two-year community college or four-year degree granting college or a licensed vocational school that is accredited by the Office of Professional Technical Education, Office of Community College Services/Oregon Department of Education.

(35) “Unprofessional Conduct” has the meaning given that term in ORS 682.025.

(36) “Volunteer” means a person who is not compensated for their time to staff an ambulance or rescue service, but who may receive reimbursement for personal expenses incurred.

Stat. Auth.: ORS 682.025 & 682.215

Stats. Implemented: ORS 682.017 - 682.991

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

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333-265-0012

Requirements for Conducting First Responder Courses

(1) An ambulance service, emergency medical services, or any other entity in Oregon may conduct First Responder courses that meet the requirements of OAR 333-265-0014.

(2) An entity that wants to conduct a First Responder course must submit an application to the Division on a form prescribed by the Division that includes all the information necessary to determine whether the course meets the Division's standards and whether the course director meets the requirements in OAR 333-265-0018. The form must be received by the Division at least 30 business days prior to the first day of class.

(3) The Division shall return an application that is incomplete to the applicant.

(4) No teaching institution shall conduct a First Responder course until the Division has approved the course.

(5) The Division may deny or revoke the approval to conduct a First Responder course in accordance with ORS 183.310 through 183.550 for failure to comply with OAR chapter 333, division 265.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0014

EMT and First Responder Course Requirements

(1) A First Responder course must include:

(a) The Emergency Medical Services, First Responder Training Course, U.S. Dept. of Transportation, National Highway Traffic Safety Administration, 1995, incorporated by reference or a curriculum that meets or exceeds the National Emergency Medical Services Education Standards published by the National Highway Traffic Safety Administration, January 2009 (DOT HS 811 077B);

(b) Didactic and skills instruction; and

(c) A practical and cognitive examination.

(2) An EMT-Basic Course must include:

(a) The EMT-Basic National Standard Curriculum, U.S. Dept. of Transportation, National Highway Traffic Safety Administration, 1994, incorporated by reference or a curriculum that meets or exceeds the National Emergency Medical Services Education Standards published by the National Highway Traffic Safety Administration, January 2009 (DOT HS 811 077B);

(b) Didactic and skills instruction;

(c) Clinical education of at least eight hours in a hospital or acute care department or other appropriate clinical or acute care medical facility where the skills within an EMT-Basic scope of practice are performed under the supervision of a preceptor; and

(d) Prehospital experience of at least eight hours under the supervision of an EMT-Basic or above where the skills within an EMT-Basic scope of practice are performed.

(3) An Advanced EMT course must include:

(a) A curriculum that meets or exceeds the National Emergency Medical Services Education Standards published by the National Highway Traffic Safety Administration, January 2009 (DOT HS 811 077B);

(b) Didactic and skills instruction;

(c) Clinical education in hospital clinical areas where the skills within an Advanced EMT scope of practice are performed under the supervision of a preceptor; and

(d) A field internship that is described in OAR 333-265-0015.

(4) An EMT-Intermediate course must include:

(a) The EMT-Intermediate curriculum, 2006, incorporated by reference;

(b) Didactic and skills instruction;

(c) Clinical experience performed under the supervision of a preceptor of at least eight hours and 20 patient contacts in a hospital emergency department or medical clinic where the skills within an EMT-Intermediate scope of practice are performed under the supervision of a preceptor; and

(d) Prehospital experience of at least eight hours under the supervision of an EMT-Intermediate or above where the skills within the scope of practice of an EMT-Intermediate are performed.

(5) An EMT-Paramedic course must include:

(a) The EMT-Paramedic National Standard Curriculum, U.S. Department of Transportation, National Highway Traffic Safety Administration, 1999, incorporated by reference or a curriculum that meets or exceeds the National Emergency Medical Services Education Standards published by the National Highway Traffic Safety Administration, January 2009 (DOT HS 811 077B);

(b) Didactic and skills instruction;

(c) Clinical experience in hospital clinical areas where the skills within an EMT-Paramedic scope of practice are performed under the supervision of a preceptor; and

(d) A field internship that is described in OAR 333-265-0016.

(6) All First Responder and EMT courses must include instructions on Oregon statutes and rules governing the EMS system, medical-legal issues, roles and responsibilities of First Responders and EMTs, and EMS professional ethics.

(7) The Division may deny or revoke course approval in accordance with the provisions of ORS 183.310 through 183.550 for failure to comply with the requirements of this section.

(8) A person must have a current Oregon EMT-Basic certification or higher at the time of enrollment in an EMT-Intermediate, Advanced EMT or EMT-Paramedic course.

(9) A person must maintain a current Oregon EMT-Basic certification or higher throughout the interval of the cognitive and practical exams.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0015

Advanced Emergency Medical Technician Field Internships

(1) A field internship is required as part of an Advanced EMT course.

(2) A field internship must provide a student the opportunity to demonstrate the integration of didactic, psychomotor skills, and clinical education necessary to perform the duties of an entry-level AEMT.

(3) The student must successfully demonstrate a skill in the classroom lab or hospital clinical setting before that skill is performed and evaluated in a field internship.

(4) During a field internship a student must participate in providing care. All EMS calls shall be under the direct visual supervision of a preceptor. In order for a call to be accepted, the preceptor must document and verify satisfactory student performance, including application of specific assessment and treatment skills required of a certified Advanced EMT.

(5) For purposes of this section, "EMS call" means a pre-hospital emergency medical services response requiring patient care at the advanced life support level and "ambulance call" means an advanced life support pre-hospital emergency medical services response, which includes dispatch, scene response, patient care while riding in the patient compartment of an ambulance, and participating in specific assessment and treatment skills required of a certified Advanced EMT.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0016

Paramedic Field Internships

(1) A field internship is required as part of an EMT-Paramedic course.

(2) A field internship must provide a student the opportunity to demonstrate the integration of didactic, psychomotor skills, and clinical education necessary to perform the duties of an entry-level paramedic.

(3) The student must successfully demonstrate a skill in the classroom lab or hospital clinical setting before that skill is performed and evaluated in a field internship.

(4) During a field internship a student must participate in providing care in at least 40 EMS calls with no less than 10 each in cardiac, respiratory, general medical, and trauma emergencies, and with at least 30 of the calls being advanced life support ambulance calls. All EMS calls shall be under the direct visual supervision of a preceptor. In order for a call to be accepted, the preceptor must document and verify satisfactory student performance, including application of specific assessment and treatment skills required of a certified EMT-Paramedic.

(5) The intern must not be one of the minimum staff required for an ambulance as described in OAR chapter 333, division 250.

(6) For purposes of this section, "EMS call" means a pre-hospital emergency medical services response requiring patient care at the advanced life support level and "ambulance call" means an advanced life support pre-hospital emergency medical services response, which includes dispatch, scene response, patient care while riding in the patient compartment of an ambulance, and participating in specific assessment and treatment skills required of a certified EMT-Paramedic.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

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333-265-0018

Course Director Qualifications for First Responder Courses

(1) An ambulance service, emergency medical services agency, or entity that has contracted with the Division to conduct a First Responder course must have a qualified Course Director.

(2) A First Responder Course Director must:

(a) Have appropriate training and experience to fulfill the role and have the credentials that demonstrate such training and experience;

(b) Be currently certified in Oregon as an EMT-Basic or higher with three years of pre-hospital care experience and in good standing with the Division, or an EMS medical director;

(c) Have a current healthcare provider CPR instructor card or certificate of course completion that meets or exceeds the 2005 American Heart Association ECC guidelines or equivalent standards approved by the Division; and

(d) Have successfully completed one of the following:

(A) The National Association of EMS Educator Course, developed by the U.S. Department of Transportation, 2002;

(B) The National Fire Protection Association (NFPA) Fire Instructor I or Fire Service Instructor I and II programs developed by the Department of Public Safety Standards and Training (DPSST);

(C) Have at least 40 hours of the Instructor Development Program offered by the DPSST; or

(D) A minimum of three college credits in adult educational theory and practice or vocational educational theory and practice from an accredited institution of higher learning.

(e) Have participated in a course director program offered by the Division; and

(f) Agree to participate in the course director program updates offered by the Division.

Stat. Auth.: ORS 682.017, 682.208

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0020

Approved EMT Course Director

(1) An Oregon teaching institution conducting EMT-Basic, Advanced EMT, EMT-Intermediate or EMT-Paramedic courses must have program faculty consisting of a designated program director, course medical director, and course directors and may have guest instructors. The number of persons carrying out the responsibilities of conducting an EMT course may vary from program to program. One person, if qualified, may serve in multiple roles.

(2) A course EMS Medical Director must meet the qualifications of a supervising physician as defined in OAR 847-035-0020.

(3) A course director for a specific course must:

(a) Be an EMS Medical Director; or

(b) Hold at least the level of Oregon certification as the course being taught and be in good standing with the Division, and have at least three years of experience at that certification level or higher, and:

(A) Have a current healthcare provider CPR instructor card or certificate of course completion that meets or exceeds the 2005 American Heart Association ECC guidelines or equivalent standards approved by the Division;

(B) Have successfully completed one of the following:

(i) The National Association of EMS Educator Course, developed by the U.S. Department of Transportation, 2002;

(ii) The National Fire Protection Association (NFPA) Fire Instructor I or Fire Service Instructor I and II programs developed by the Department of Public Safety Standards and Training (DPSST);

(iii) At least 40 hours of the Instructor Development Program offered by the DPSST; or

(iv) A minimum of three college credits in adult educational theory and practice or vocational educational theory and practice from an accredited institution of higher learning;

(C) Participated in the Course Director Program offered by the Division; and

(D) Participated in the Course Director Program updates offered by the Division.

(4) In addition to the Course Director requirements in section (3) of this rule, an EMT-Paramedic Course Director must:

(a) Be an EMS Medical Director and hold a current:

(A) American Board of Emergency Medicine Certificate; or

(B) Advance Cardiac Life Support (ACLS) Instructor certificate and Advance Trauma Life Support certificate or equivalent as approved by the Division; or

(b) Be a certified Paramedic in good standing with the Division with at least three years of experience at the certification level and:

(A) Possess at least an associate's degree from an accredited institution of higher learning;

(B) Hold an Advance Cardiac Life Support (ACLS) Instructor certificate from the American Heart Association or equivalent that has been approved by the Division; and

(C) Hold a Basic Trauma Life Support (BTLS) Instructor certificate or equivalent that has been approved by the Division, or a Pre-hospital Trauma Life Support (PHTLS) Instructor certificate or equivalent that has been approved by the Division.

(5) A guest instructor must:

(a) Be qualified and have the expertise in the specific course subject; and

(b) Follow the course curriculum and meet the course objectives for that specific subject.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017

Hist.: HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, 6-30-94, cert. ef. 7-1-94,

Renumbered from 333-028-0032; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0022

Program Administrator and Faculty Responsibilities

(1) A Program Administrator is responsible for course planning, the organizing and administration of courses, periodic review of courses, program evaluation, and continued development and effectiveness of courses.

(2) A course EMS Medical Director shall:

(a) Provide medical direction for the didactic, clinical and field internship portions of an EMT course; and

(b) Act as the ultimate medical authority regarding course content, procedures and protocols.

(3) A Course Director for a specific course:

(a) Is responsible for course planning and organizing, including scheduling lectures, coordinating and arranging clinical rotations, and field internships;

(b) Is the primary instructor, who conducts at least 50 percent of the didactic sessions, unless this requirement is waived by the Division in advance;

(c) Must ensure, if guest instructors are used, that the guest instructor is qualified to teach the subject matter, meets requirement set forth in OAR 333-265-0020, and presents lessons that address all objectives identified in the course curriculum for the topic being presented;

(d) Must ensure that:

(A) On the first day of class each student completes a registration form prescribed by the Division;

(B) Each student is informed that failure to complete a registration form will make them ineligible to take the certification exam; and

(C) The completed registration forms are collected and submitted to the Division within 21 days of the first day of class.

(e) Must have written documentation showing whether a student has successfully completed the course as defined in OAR 333-265-0014.

Stat. Auth.: ORS 682.017

Stats. Implemented: ORS 682.017

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0023

First Responder and EMT Examinations

(1) In order to be a First Responder, a candidate must take and pass a cognitive and practical certification examination.

(2) The First Responder cognitive and practical examinations must be administered by an entity approved by the Division to conduct First Responder courses. An approved entity must use a Division approved cognitive and practical exam. The National Registry of Emergency Medical Technicians cognitive examination for First Responders may also be used.

(3) EMT-Basic, Advanced Emergency Medical Technician and EMT-Paramedic candidates must complete the cognitive examination designated by the National Registry of EMTs. The fee for this exam must be paid directly to the National Registry of EMTs.

(4) EMT-Intermediate students must complete a cognitive examination designated by the Division.

(5) The EMT-Basic and EMT-Intermediate examinations for certification will be administered by a Certifying Officer and hosted by a teaching institution that offers EMT-Basic and EMT-Intermediate courses.

(6) An Advanced EMT and EMT-Paramedic practical examination is a National Registry of EMTs examination offered at various times during

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the year by the Division. An Advanced EMT or EMT-Paramedic candidate may also take the appropriate practical examination in any state.

(7) The Division or the National Registry of EMTs shall establish the passing scores of all cognitive and practical certification examinations.

(8) An EMT-Basic candidate who fails:

(a) Not more than two skill stations of the EMT-Basic practical examination may retest those skill stations failed on the same day with no additional charge by the Division.

(b) An EMT-Basic skill station a second time must submit a re-examination fee to the Division and be scheduled through his or her teaching institution to retest any skill station failed.

(c) More than two skill stations of the EMT-Basic practical examination must schedule a retest for a separate day through his or her teaching institution, and submit a re-examination fee to the Division.

(9) An EMT-Intermediate candidate who fails:

(a) Not more than three skill stations of the EMT-Intermediate practical examination may retest those skill stations failed on the same day with no additional charge by the Division.

(b) An EMT-Intermediate skill station a second time must submit a re-examination fee and be scheduled through the Division to retest any skill station failed.

(c) More than three skill stations of the EMT-Intermediate practical examination must schedule a retest for a separate day, and submit a re-examination fee to the Division.

(10) If a candidate fails either the cognitive or practical examination three times, the candidate must successfully complete a Division approved refresher course for that specific certification level to become eligible to re-enter the certification process. Following successful completion of a refresher course, a candidate must re-take and pass both the cognitive and practical examination within three additional attempts.

(11) The passing results of the cognitive and practical certification examinations for each level of certification will remain valid for a 12-month period from the date the examination was successfully completed. A candidate not successfully completing the failed portion of an examination within that 12-month period shall be required to repeat the entire cognitive and practical examinations.

(12) A candidate must pass both the cognitive and practical examinations within 24 months after the completion of the required courses.

(13) A candidate who fails the cognitive and practical examination six times or does not complete the examination process within 24 months of the completion date of the initial required courses, must successfully complete the entire EMT course for that certification level and reapply for certification.

(14) The entity providing a cognitive examination must have a policy for the accommodation of a person with a documented learning disability.

(15) No accommodation shall be provided for a practical certification examination.

(16) EMT-Basic and EMT-Intermediate practical examinations must be attended by a Division approved Certifying Officer that:

(a) Is certified in Oregon at least at the level of examination they are administering with at least two years field experience at that level or above and is in good standing with the Division; and

(b) Has completed training offered by the Division explaining the role and responsibilities of a Certifying Officer.

Stat. Auth.: ORS 682.017, ORS 682.208, & ORS 682.216

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0025

Application Process to Obtain a First Responder or EMT Certificate

(1) For any person to act as a First Responder or an EMT a certificate must be obtained from the Division.

(2) An applicant for First Responder must:

(a) Be at least 16 years of age;

(b) Submit proof of successfully completing an approved course, including completion of all clinical and internship requirements, if applicable;

(c) Submit proof of passing the required cognitive and practical examinations;

(d) Submit a completed application on a form prescribed by the Division along with the applicable fee;

(e) Consent to a criminal background check through the Law Enforcement Data System (LEDS), including a nationwide criminal record check by fingerprint identification under the authority of ORS 181.534 and 181.537 if required; and

(f) Provide authorization for the release of information, as necessary, from any persons or entities, including but not limited to educational institutions, employers, hospitals, treatment facilities, institutions, organization, governmental or law enforcement agencies.

(3) An individual who wishes to become certified as an EMT-Basic, Advanced EMT, EMT-Intermediate, or EMT-Paramedic shall:

(a) Be at least 18 years of age;

(b) Submit a completed application on a form prescribed by the Division along with the applicable fee;

(c) Submit proof of successfully completing an approved course, including all clinical and internship requirements if applicable;

(d) Submit proof of passing the required cognitive and practical examinations;

(e) For an EMT-Basic, Advanced EMT or EMT-Intermediate applicant, submit proof that the applicant received a high school diploma or equivalent or a degree from an accredited institution of higher learning;

(f) For an EMT-Paramedic applicant submit proof that the applicant has received an associate's degree or higher from an accredited institution of higher learning;

(g) Consent to a criminal background check through the Law Enforcement Data System (LEDS), including a nationwide criminal record check by fingerprint identification under the authority of ORS 181.534 and 181.537 if required; and

(h) Provide an authorization for the release of information, as necessary, from any persons or entities, including but not limited to educational institutions, employers, hospitals, treatment facilities, institutions, organizations, governmental or law enforcement agencies in order for the Division to complete the review of the application; and

(i) Submit a fee as set out in OAR 333-265-0030.

(4) EMT-Basic and EMT-Intermediate applications for certification must be received by the Division three weeks prior to the date of the certifying practical examination.

(5) Advanced EMT and EMT-Paramedic applications for certification must be received by the Division four weeks prior to the date of the practical examinations.

(6) Any fee for a criminal background check through LEDS or a nationwide criminal background check shall be the responsibility of the applicant.

(7) An applicant for an initial certification as an EMT or First Responder who completed training in a program outside Oregon and has never been certified in another state, must:

(a) Meet all requirements for that level as established in OAR 333-265-0000 through 333-265-0023;

(b) Demonstrate proof of current National Registry certification; and

(c) Make application within 24 months from the date that their training program was completed, unless an applicant has been on active duty in the military within the last four years and in that case, the application may be submitted more than 24 months from the date the training program was completed.

(8) An initial certification must not exceed 30 months.

(9) If an applicant has been on active duty in the military within the past four years and the applicant can demonstrate proof of current National Registry certification for the level of certification desired, current certification in another state is not mandatory.

(10) The Division may return any application that is incomplete or is not accompanied by the appropriate fee.

Stat. Auth.: ORS 682.017, 682.028 & 682.208

Stats. Implemented: ORS 682.017, 682.028 & 682.208

Hist.: OH 9-2001, f. & cert. ef. 4-24-01; Hist.: PH 10-2008, f. & cert. ef. 6-16-08; PH 11-2008(Temp), f. 6-19-08, cert. ef. 6-20-08 thru 12-12-08; Administrative correction 12-22-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0030

Fees for the Certification and Recertification of a First Responder or EMT

(1) Beginning with the effective date of these rules through June 30, 2011 the following fees apply:

(a) Initial application for First Responder — \$35;

(b) The initial application and same-day practical examination fees for EMTs:

(A) EMT-Basic — \$95;

(B) Advanced EMT — \$95

(C) EMT-Intermediate — \$95; and

(D) EMT-Paramedic — \$250.

(c) Cognitive re-examination fees for EMT — Intermediate — \$60.

(d) Practical re-examination fees:

(A) EMT-Basic — \$40;

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- (B) Advanced EMT — \$60
 - (C) EMT-Intermediate — \$60; and
 - (D) EMT-Paramedic — \$80.
 - (e) Indorsement certification fees:
 - (A) First Responder — \$35;
 - (B) EMT-Basic — \$95;
 - (C) Advanced EMT — \$95
 - (D) EMT-Intermediate — \$95; and
 - (E) EMT-Paramedic — \$250.
 - (f) Provisional certification fee is an additional \$50.
 - (g) Recertification fees:
 - (A) Certified First Responder — \$15;
 - (B) EMT-Basic — \$40;
 - (C) Advanced EMT — \$70
 - (D) EMT-Intermediate — \$65; and
 - (E) EMT-Paramedic — \$120.
- (2) Beginning on July 1, 2011 through June 30, 2013 the following fees apply:
- (a) Initial application for First Responder — \$40;
 - (b) The initial application and same-day practical examination fees for EMTs:
 - (A) EMT-Basic — \$100;
 - (B) Advanced EMT — \$110
 - (C) EMT-Intermediate — \$110; and
 - (D) EMT-Paramedic — \$275.
 - (c) Cognitive re-examination fees for EMT-Intermediate — \$60.
 - (d) Practical re-examination fees:
 - (A) EMT-Basic — \$50;
 - (B) Advanced EMT — \$75
 - (C) EMT-Intermediate — \$75; and
 - (D) EMT-Paramedic — \$95.
 - (e) Indorsement certification fees:
 - (A) First Responder — \$40;
 - (B) EMT-Basic — \$125;
 - (C) Advanced EMT — \$150
 - (D) EMT-Intermediate — \$150; and
 - (E) EMT-Paramedic — \$300.
 - (f) Provisional certification fee is an additional \$50.
 - (g) Recertification fees:
 - (A) Certified First Responder — \$20;
 - (B) EMT-Basic — \$50;
 - (C) Advanced EMT — \$80
 - (D) EMT-Intermediate — \$80; and
 - (E) EMT-Paramedic — \$140.
- (3) Beginning on July 1, 2013 the following fees apply:
- (a) Initial application for First Responder — \$45;
 - (b) The initial application and same-day practical examination fees for EMTs:
 - (A) EMT-Basic — \$110;
 - (B) Advanced EMT — \$125
 - (C) EMT-Intermediate — \$125; and
 - (D) EMT-Paramedic — \$290.
 - (c) Cognitive re-examination fees for Advanced EMT and EMT-Intermediate — \$60.
 - (d) Practical re-examination fees:
 - (A) EMT-Basic — \$55;
 - (B) Advanced EMT — \$85
 - (C) EMT-Intermediate — \$85; and
 - (D) EMT-Paramedic — \$100.
 - (e) Indorsement certification fees:
 - (A) First Responder — \$50;
 - (B) EMT-Basic — \$140;
 - (C) Advanced EMT — \$165
 - (D) EMT-Intermediate — \$165; and
 - (E) EMT-Paramedic — \$300.
 - (f) Provisional certification fee is an additional \$50.
 - (g) Recertification fees:
 - (A) Certified First Responder — \$23;
 - (B) EMT-Basic — \$55;
 - (C) Advanced EMT — \$85
 - (D) EMT-Intermediate — \$85; and
 - (E) EMT-Paramedic — \$150.
- (4) As authorized by ORS 682.216, a recertification application post-marked after May 1 of the recertification year must include a \$40 late fee in addition to the recertification fee.

(5) If an emergency medical technician or first responder has been on active military duty for more than six months of a recertification period which prevented them from accessing continuing education, the Division may approve an extension of the current certification to permit obtaining the required educational hours.

(6) An EMS agency or rescue service which utilizes volunteers to provide a majority of its services may request that the Division waive the First Responder or EMT recertification fee for its volunteers by applying for a waiver on forms prescribed by the Division that includes:

(a) A statement certifying that the ambulance or rescue service is unable to maintain an adequate number of volunteer First Responders or EMTs due to the required First Responder or EMT recertification fees; and

(b) A copy of a signed agreement between the volunteer service and the volunteer First Responder or EMT is attached to the First Responder's or EMT's application for recertification specifying that the First Responder or EMT:

(A) Is not employed as a First Responder or EMT elsewhere;

(B) Will be affiliated with the volunteer service for the entire upcoming certification period;

(C) Will be scheduled monthly to staff the ambulance or rescue service; and

(D) Will immediately pay the Division the required current First Responder or EMT recertification fee if the First Responder or EMT is not scheduled monthly or is no longer affiliated with a volunteer ambulance or rescue service and wants to remain certified as a First Responder or EMT.

(7) An Oregon-certified First Responder or EMT wishing to obtain a duplicate First Responder or EMT certificate, must submit a written request to the Division in the form required by the Division and pay a fee in the amount of \$25.

(8) All fees established in this section are nonrefundable except that the Division may waive a subsequent examination fee for a person who fails to appear for an examination due to circumstances that are beyond the control of the candidate.

(9) The fees established in sections (1) through (3) of this rule apply to any application submitted on or after the effective date of these rules.

Stat. Auth.: ORS 682.017, 682.212, 682.216

Stats. Implemented: ORS 682.017, 682.212, 682.216

Hist.: HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0017; HD 8-1995, f. & cert. ef. 11-6-95; OHD 2-1999, f. & cert. ef. 2-4-99; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0040

Certification as a First Responder or EMT

(1) The Division will review an application for certification as a First Responder or EMT and will conduct a criminal background check.

(2) If there are no issues that arise during the review of the application and the applicant meets all the requirements of ORS chapter 682 and these rules, the Division will grant the applicant a certificate.

(3) If the applicant does not meet the standards for certification or there are criminal history or personal history issues that call into question the ability of the applicant to perform the duties of a certified First Responder or EMT in accordance with ORS chapter 682 or these rules, the Division may deny the applicant on the basis of the information provided in the application, or conduct an additional investigation in accordance with OAR 333-265-0085.

(4) Following an investigation the Division may:

(a) Deny the application;

(b) Grant the application but place the applicant on probation;

(c) Grant the application but place practice restrictions on the applicant; or

(d) Grant the application if the criminal or personal history issues were resolved through the investigation to the Division's satisfaction.

(5) Final actions taken by the Division in denying an applicant, placing an applicant on probation, or by placing restrictions on the applicant's practice shall be done in accordance with ORS chapter 183.

(6) Nothing in this section precludes the Division from taking an action authorized in ORS Chapter 682.

(7) The certificates of First Responders expire on June 30 of even-numbered years.

(8) The certificates of EMT-Basics, Advanced EMTs, EMT-Intermediates and EMT-Paramedics expire on June 30 of odd-numbered years.

Stat. Auth.: ORS 682.017, 682.208, 682.216

Stats. Implemented: ORS 682.017, 682.208, 682.216

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0615; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0015; HD 8-

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1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 11-2008(Temp), f. 6-19-08, cert. ef. 6-20-08 thru 12-12-08; Administrative correction 12-22-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0050

First Responder and EMT Certification by Indorsement

(1) A person certified with another state as a First Responder, EMT-Basic, Advanced EMT, EMT-Intermediate, or EMT-Paramedic and registered with the National Registry of EMT's as a First Responder, EMT-Basic, Advanced EMT, EMT-Intermediate I-99, or EMT-Paramedic may apply to the Division for a certificate by indorsement.

(a) A National Registry EMT-Intermediate I-99 may apply for an Oregon EMT-Intermediate certificate by indorsement.

(b) A National Registry EMT-Intermediate I-85 may apply for an EMT-Basic certificate by indorsement.

(2) A person applying for Oregon First Responder or EMT certification by indorsement shall:

(a) Submit a completed application on a form prescribed by the Division along with the applicable nonrefundable fee;

(b) Submit documentation of the First Responder or EMT training which meets or exceeds the requirements for Oregon First Responder or EMT certification at the level of certification for which the person is applying;

(c) If applying for EMT-Paramedic certification by indorsement, submit proof of having received an associate's degree or higher from an accredited institution of higher learning or submit proof of having worked for at least three years out of the last five years as a paramedic in either another state or in the United States military at the National Registry Paramedic level.

(d) Be in good standing with the applicant's current certifying agency and with the National Registry of EMTs; and

(e) Consent to a criminal background check in accordance with OAR 333-265-0025(3).

(3) The Division shall review an application for certification by indorsement and shall conduct a criminal background check.

(4) If there are no issues that arise during the review of the application and the applicant meets all the applicable requirements of ORS Chapter 682 and these rules, the Division shall grant the applicant a certificate by indorsement.

(5) If the applicant does not meet the standards for certification, or there are criminal history or personal history issues that call into question the ability of the applicant to perform the duties of a certified first responder or EMT, in accordance with ORS Chapter 682 or these rules, the Division may deny the application on the basis of the information provided, or conduct an additional investigation in accordance with OAR 333-265-0085. Following such an investigation the Division may take any action as specified in OAR 333-265-0040(4).

(6) The Division shall be the sole agency authorized to determine equivalency of course work presented from an out of state accredited institution of higher learning.

(7) The Division shall return any application that is incomplete, or can not be verified.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0620; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 18-1990(Temp), f. & cert. ef. 6-19-90; HD 19-1991, f. & cert. ef. 10-18-91; HD 8-1993, f. 6-22-93, cert. ef. 7-1-93; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0020; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0060

EMT-Paramedic Provisional Certification

(1) As authorized by ORS 682.216, the Division may issue a provisional EMT-Paramedic certification to an out-of-state certified EMT-Paramedic who meets the requirements in OAR 333-265-0050, except for the educational requirements in OAR 333-265-0050(3)(a) and is in the process of obtaining an associate's degree or higher from an accredited institution for higher learning.

(2) An applicant shall comply with the application requirements in OAR 333-265-0050 and shall submit:

(a) A letter of recommendation from the applicant's most recent Medical Director; and

(b) A letter from the applicant's prospective EMS Medical Director stating that the EMS Medical Director will serve as his or her EMS Medical Director while being provisionally certified.

(3) The Division may return any application that is incomplete, can not be verified, or is not accompanied by the appropriate fee.

(4) An EMT-Paramedic with a provisional certification issued under these rules shall enter into an agreement with the Division and shall submit quarterly reports to the Division describing the certificate holder's progress in obtaining an associate's degree or higher from an accredited institution for higher learning.

(5) An EMT-Paramedic provisional certification shall be revoked if the person:

(a) Ceases active involvement in emergency medical services;

(b) Fails to meet the conditions set forth in the agreement;

(c) Fails to cooperate or actively participate in a request from the Division in order to obtain more information or required materials;

(d) Has his or her EMT scope of practice revoked or restricted by his or her EMS Medical Director; or

(e) Does not submit written documentation of the successful completion of any of the educational requirements set out in this rule.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0070

Certification as an EMT of Any Person in Another State

(1) Any person who provides pre-hospital emergency or non-emergency care in Oregon must be certified as an Oregon First Responder or EMT and function under a Division-approved EMS Medical Director.

(2) Oregon First Responder or EMT certification is not required when:

(a) Specifically exempted by ORS 682.035;

(b) An out-of-state certified EMT is transporting a patient through the state;

(c) An out-of-state certified EMT is caring for and transporting a patient from an Oregon medical facility to an out-of-state medical facility or other out-of-state location;

(d) An out-of-state certified EMT is caring for and transporting a patient originating from outside of Oregon to a medical facility or other location in Oregon; or

(e) A disaster or public health emergency has been declared under ORS Chapter 401 or 433 and licensing provisions have been waived by the Governor.

Stat. Auth.: ORS 682.017, 682.204

Stats. Implemented: ORS 682.017, 682.204

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0625; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0025; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0080

Reportable Events; Investigations and Discipline of Certificate Holders

(1) In accordance with ORS 676.150 and using a form prescribed by the Division, First Responders or EMTs must notify the Division of the actions or events listed in section (3) of this rule. Failure to comply with the reporting requirements of this rule may result in disciplinary action against the First Responder or EMT.

(2) A First Responder or EMT who has reasonable cause to believe another First Responder or EMT has engaged in prohibited, dishonorable or unprofessional conduct as defined in ORS 676.150, 682.025 and 682.220 shall report that conduct to the Division without undue delay, within 10 days, after the First Responder or EMT learns of the conduct unless state or federal laws relating to confidentiality or the protection of health information prohibit such a disclosure.

(3) Within 10 days a First Responder or EMT shall report to the Division the following:

(a) Conviction of a misdemeanor or felony;

(b) A felony arrest;

(c) A disciplinary restriction placed on a scope of practice of the certificate holder by the EMS Medical Director;

(d) A legal action being filed against the certificate holder alleging medical malpractice or misconduct;

(e) A physical disability that affects the ability of the certificate holder to meet the Functional Job Analysis, Appendix A of the 1994 EMT-Basic, National Standard Curriculum, incorporated by reference, and the certificate holder continues to respond to calls and is providing patient care; or

(f) A change in mental health which may affect a certificate holder's ability to perform as a certified First Responder or EMT.

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(4) State or federal laws relating to confidentiality or the protection of health information that might prohibit a First Responder or EMT from reporting prohibited or unprofessional conduct include but are not limited to:

(a) Public Law 104-191, 42 CFR Parts 160, 162, and 164 (The Health Insurance Portability and Accountability Act, HIPAA);

(b) 42 CFR Part 2 (federal law protecting drug and alcohol treatment information);

(c) ORS 192.518 through 192.529 (state law protecting health information); and

(d) ORS 179.505 (written accounts by health care providers).

Stat. Auth.: ORS 682.017, 682.220, 682.224

Stats. Implemented: ORS 682.017, 682.220, 682.224

Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0635; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0035; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0083

Conduct or Practice Contrary to Recognized Standards of Ethics

The following list includes, but is not limited to, conduct or practice by a First Responder or EMT that the Division considers to be contrary to the recognized standards of ethics of the medical profession:

(1) Knowing or willful violation of patient privacy or confidentiality by releasing information to persons not directly involved in the care or treatment of the patient;

(2) Illegal drug use on or off duty;

(3) Alcohol use within eight hours of going on duty or while on duty or in an on-call status;

(4) Violation of direct verbal orders from a physician who is responsible for the care of a patient;

(5) Violation of orders given by an online medical resource physician, whether delivered by radio or telephone;

(6) Violation of standing orders without cause and documentation;

(7) Use of invasive medical procedures in violation of generally accepted standards of the medical community;

(8) Any action that constitutes a violation of any statute, municipal code, or administrative rule that endangers the public, other public safety officials, other First Responder or EMT, patients, or the general public (including improper operation of an emergency medical vehicle);

(9) Instructing, causing or contributing to another individual violating a statute or administrative rule, including First Responder or EMT acting in a supervisory capacity;

(10) Participation in the issuance of false continuing education documents or collaboration therein, including issuing continuing education verification to one who did not legitimately attend an educational event;

(11) Signing-in to an educational event for a person not actually present;

(12) Knowingly assisting or permitting another First Responder or EMT to exceed his or her lawful scope of practice;

(13) Unlawful use of emergency vehicle lights and sirens;

(14) Providing false or misleading information to the Division, to the State EMS Committee, to the Subcommittee on EMT Certification and Discipline, to an EMS teaching institution or clinical/field internship agency;

(15) Responding to scenes in which the First Responder or EMT is not properly dispatched ("call-jumping"), whether in a private auto, ambulance, or other vehicle, in contravention of local protocols, procedures, or ordinances, or interfering with the safe and effective operation of an EMS system;

(16) Cheating on any examination used to measure EMS related knowledge or skills;

(17) Assisting another person in obtaining an unfair advantage on a First Responder or EMT examination;

(18) Defrauding the Division;

(19) Knowingly providing emergency medical care aboard an unlicensed ambulance;

(20) Violation of the terms of a written agreement with the Division or an order issued by the Division;

(21) Engaging in any sexual activities, including sexual harassment, that constitutes a crime in Oregon and that may endanger the public or a person providing emergency medical care;

(22) Arriving for duty impaired or in a condition whereby the First Responder or EMT is likely to become impaired through fatigue, illness, or any other cause, as to make it unsafe for the employee to begin to operate an ambulance or provide patient care;

(23) Failure to cooperate with the Division in an investigation, including failure to comply with a request for records, or a psychological, physical, psychiatric, alcohol or chemical dependency assessment; and

(24) Any violation of these rules or any law, administrative rule, or regulation governing ambulances, First Responder or EMTs, or emergency medical service systems.

Stat. Auth.: ORS 682.017

Stats. Implemented: Ch. 536 OL 2009

Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0085

Investigations

(1) The Division may conduct an investigation of a First Responder or EMT if:

(a) The Division receives a complaint concerning a First Responder or EMT;

(b) Personal or criminal history questions arise during a review of an application that raise questions about the First Responder or EMT's ability to safely perform the duties of a First Responder or EMT;

(c) A reportable action is received pursuant to OAR 333-265-0080; or

(d) The Division receives information in any manner that indicates a First Responder or EMT has violated ORS chapter 682 or these rules, may be medically incompetent, guilty of prohibited, unprofessional or dishonorable conduct or mentally or physically unable to safely function as a First Responder or EMT.

(2) The Division may investigate the off-duty conduct of a First Responder or EMT to the extent that such conduct may reasonably raise questions about the ability of the First Responder or EMT to perform the duties of a First Responder or EMT in accordance with the standards established by this division.

(3) Upon receipt of a complaint about a First Responder or EMT or applicant, the Division may conduct an investigation as described under ORS 676.165 and 682.220. Investigations shall be conducted in accordance with ORS 676.175.

(4) The fact that an investigation is conducted by the Division does not imply that disciplinary action will be taken.

(5) During an investigation the Division may do any of the following:

(a) Request additional information from the First Responder or EMT;

(b) Conduct a phone or in-person interview; or

(c) Request or order that the First Responder or EMT undergo a psychological, physical, psychiatric, alcohol or chemical dependency assessment.

Stat. Auth.: ORS 676.165, 676.175

Stats. Implemented: ORS 682.017, 682.220, 682.224

Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0087

Discipline

(1) Upon completion of an investigation the Division may do any of the following:

(a) Close the investigation and take no action;

(b) Issue a letter of reprimand or instruction;

(c) Place the First Responder or EMT on probation;

(d) Place a practice restriction on the First Responder or EMT;

(e) Suspend the First Responder or EMT;

(f) Revoke the certificate of the First Responder or EMT;

(g) Enter into a stipulated agreement with the First Responder or EMT to impose discipline; or

(h) Take such other disciplinary action as the Division, in its discretion, finds proper, including assessment of a civil penalty not to exceed \$5,000.

(2) Any disciplinary action taken by the Division will be done in accordance with ORS Chapter 183.

(3) The Division may assess the costs of a disciplinary proceeding against a First Responder or EMT. Costs may include, but are not limited to:

(a) Costs incurred by the Division in conducting the investigation;

(b) Costs of any evaluation or assessment requested by the Division;

and

(c) Attorney fees.

(4) Voluntary Surrender:

(a) A First Responder or EMT may voluntarily surrender his or her certificate if the First Responder or EMT submits a written request to the Division specifying the reason for the surrender and the Division agrees to accept the voluntary surrender.

(b) The Division may accept a voluntary surrender of the First Responder or EMT on the condition that the First Responder or EMT does

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not reapply for certification, or agrees not to reapply for a specified period of time.

(5) If a First Responder or EMT who voluntarily surrendered his or her First Responder or EMT certification applies for reinstatement, the Division may deny that person's application if the Division finds that the person has committed an act that would have resulted in discipline being imposed while they were previously certified.

(6) If a First Responder or EMT's certificate is revoked he or she may not reapply for certification for at least two years from the date of the final order revoking the certificate.

Stat. Auth.: ORS 682.017, 682.220, 682.224
Stats. Implemented: ORS 682.017, 682.220, 682.224
Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0090

Reverting to a Lower Level of EMT Certification

(1) An EMT may revert to a lower level of certification at any time during a certification period if the EMT:

(a) Submits a written request to the Division specifying the reason for the change in the certification level;

(b) Submits an application for recertification for the lower level of certification sought with the appropriate fee;

(c) Surrenders his or her current EMT certificate to the Division;

(d) Is in good standing with the Division;

(e) Adequately documents appropriate continuing education hours and courses for the certification level the individual would revert to; and

(f) Receives written approval from the Division for a change in certification level.

(2) If an EMT requests reinstatement of the higher level of certification within one year of reverting to a lower level of certification the EMT must complete the requirements specified in OAR 333-265-0100(3) and 333-265-0105.

(3) If an EMT requests reinstatement of the higher level of certification the EMT must complete the requirements specified in OAR 333-265-0100.

Stat. Auth.: ORS 682.017, 682.216
Stats. Implemented: ORS 682.017, 682.216
Hist.: HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0037; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0100

Expiration and Recertification of EMT Certification

(1) The certificates of First Responders expire on June 30 of even-numbered years.

(2) The certificates of EMT-Basics, Advanced EMTs, EMT-Intermediates and EMT-Paramedics expire on June 30 of odd-numbered years.

(3) An applicant for recertification must:

(a) Complete and sign an application form prescribed by the Division certifying that the information in the application is correct and truthful;

(b) Meet the requirements of ORS chapter 682 and these rules;

(c) Consent to a criminal background check in accordance with OAR 333-265-0025(3);

(d) Provide an authorization for the release of information to the Division, as necessary, from any persons or entities, including but not limited to employers, educational institutions, hospitals, treatment facilities, institutions, organizations, governmental or law enforcement agencies in order for the Division to make a complete review of the application.

(e) Complete the continuing education requirements in OAR 333-265-0110; and

(f) Submit a fee set out in OAR 333-265-0030.

Stat. Auth.: ORS 682.017, 682.216
Stats. Implemented: ORS 682.017, 682.216
Hist.: HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0640; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, 6-30-94, cert. ef. 7-1-94, Renumbered from 333-028-0040; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0105

Reinstatement of First Responder and EMT Certification

(1) To reinstate an expired Oregon First Responder, EMT-Basic, Advanced EMT, EMT-Intermediate, or EMT-Paramedic certificate that has been expired for less than one year, an applicant must:

(a) Submit a completed application for recertification;

(b) Submit the appropriate recertification fee plus a late fee; and

(c) Provide evidence of completion of continuing education requirements as specified in Appendix 1, incorporated by reference, and courses

completed from the certificate holder's last successful application through the date of the present application for recertification, as specified in this rule.

(2) Reinstatement program for a certified First Responder:

(a) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Division approved equivalent CPR course completion document;

(b) Complete the First Responder refresher course approved by the Division;

(c) Pass the First Responder cognitive and practical examinations within three attempts, including a same-day re-examination; and

(d) Complete the above listed program requirements within six months of applying for reinstatement.

(3) Reinstatement program for an EMT-Basic:

(a) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Division approved equivalent CPR course completion document;

(b) Complete the EMT-Basic Refresher Training Program, U.S. Department of Transportation, National Highway Traffic Safety Administration, 1995, incorporated by reference;

(c) Pass the EMT-Basic cognitive and practical examinations within three attempts, including a same-day re-examination; and

(d) Complete the above listed program requirements within six months of applying for reinstatement.

(4) Reinstatement program for an EMT-Intermediate:

(a) Obtain an American Heart Association "Health Care Provider," or American Red Cross "Basic Life Support for the Professional Rescuer," or other Division approved equivalent CPR course completion document;

(b) Complete a Division approved EMT-Intermediate refresher course consisting of at least:

(A) Fourteen hours of didactic instruction;

(B) Eight hours of clinical experience in a hospital emergency department in which patient assessment, eliciting a concise and focused medical history, oxygenation and ventilator management, intravenous therapy, and medication preparation and administration are evaluated; and

(C) Demonstration of five supervised and documented successful pharyngeal esophageal airway device placements (mannequin permitted) and five supervised and documented successful intravenous line placements (mannequin permitted).

(c) Pass the EMT-Intermediate cognitive and practical examination within three attempts, including the same day re-examination; and

(d) Complete the above listed program requirements within one year of applying for reinstatement.

(5) Reinstatement program for an EMT-Paramedic:

(a) Complete an Advanced Cardiac Life Support (ACLS) course, provider or instructor course;

(b) Complete a Basic Trauma Life Support (BTLS) course, or Pre-Hospital Trauma Life Support (PHTLS) course, provider or instructor course;

(c) Complete an Advanced Pediatric Life Support (APLS), Pediatric Advanced Life Support (PALS), Pediatric Education for Pre-hospital Professionals (PEPP), or Neonatal Advance Life Support (NALS) course, provider or instructor course;

(d) Complete the U.S. Department of Transportation, National Highway Traffic Safety Administration 2001 EMT-Paramedic: National Standard Curriculum Refresher Training Program, incorporated by reference;

(e) Pass the EMT-Paramedic cognitive and practical examinations within three attempts, including the same-day re-examination;

(f) Complete the above listed program requirements within two years of applying for reinstatement; and

(g) Document completion of a DOT EMT-Paramedic Training Program taken after January 1, 1977.

Stat. Auth.: ORS 682.216
Stats. Implemented: ORS 682.017, 682.216
Hist.: PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0110

Certified First Responder and EMT Continuing Education Requirements for Recertification

(1) A First Responder is required to:

(a) Complete 12 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(b) Complete all requirements of the National Registry of Emergency Medical Technicians for First Responder re-registration.

(2) After July 1, 2009 an EMT-Basic is required to:

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(a) Complete 24 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(b) Complete all requirements of the National Registry of EMT-Basic or Emergency Medical Technician re-registration.

(3) An Advanced EMT is required to:

(a) Complete 36 hours of continuing education as specified in Appendix 1, incorporated by reference; or

(b) Complete all requirements of the National Registry of EMT Advanced EMT re-registration.

(4) An EMT-Intermediate is required to:

(a) Complete a course with published standards and guidelines for cardiopulmonary resuscitation and emergency cardiac care in which the EMT has demonstrated knowledge and skills in the performance of subcutaneous (SQ) injections, automated external defibrillator (AED) operation, one and two person rescuer cardiopulmonary resuscitation (adult, child, and infant) and relief of foreign body airway obstruction; and

(b) Obtain at least 36 hours of continuing education as specified in Appendix 1, incorporated by reference.

(5) An EMT-Paramedic is required to:

(a) Complete all requirements of the National Registry of EMT-Paramedic re-registration; or

(b) Obtain at least 48 hours of continuing education as specified in Appendix 1, incorporated by reference.

(6) All continuing education credits specified in sections (1) through (5) of this rule shall be completed between the date of the certificate holder's last successful application to the date of the certificate holder's current recertification application.

(7) Continuing education credit shall be granted for:

(a) Attending training seminars, educational conferences, and continuing education classes within the certificate holder's scope of practice;

(b) Attending approved courses for the same or higher level of certification; and

(c) Online continuing education that provides a certificate of completion and is approved by the Continuing Education Coordinating Board for Emergency Medical Services (CECBEMS).

(8) Up to 50 percent of the hours of continuing education credits for each subject listed in section 1 of Appendix 1 may be obtained by:

(a) Watching a video, CD-ROM, or other visual media;

(b) Being an EMT practical certification exam evaluator, if the certificate holder is qualified as such;

(c) Reading EMS journals or articles; and

(d) Teaching any of the topics listed in Appendix 1, if the certificate holder is qualified to teach the subject.

(9) In addition to the hours of continuing education required in this rule, an EMT-Intermediate or EMT-Paramedic certificate holder must, as specified in section 2 of Appendix 1, incorporated by reference, demonstrate skills proficiency through a hands-on competency examination supervised by the EMS Medical Director or his or her designee. An EMS Medical Director may require successful performance in a minimum number of clinical skills in these areas on either human subjects or mannequins (e.g. venipunctures, endotracheal intubations, etc.).

(10) An EMS Medical Director may require additional continuing education requirements and skill competency.

(11) When a certificate holder obtains an initial certificate and there is:

(a) Less than six months until recertification, no continuing education credits are required to obtain recertification;

(b) More than six months but less than one year until recertification, the certificate holder must complete 50 percent of the continuing education credits in each category; or

(c) More than one year until recertification, the certificate holder must complete all continuing education credits.

(12) Continuing education credits are granted on an hour-for-hour basis.

(13) It shall be the responsibility of each certificate holder to ensure the hours obtained meet the Division's recertification requirements.

(14) A certificate holder must submit proof, in a manner prescribed in OAR 333-265-0140 that the continuing education requirements have been met.

(15) Education programs, journals and articles used towards continuing education must be approved by the EMS Medical Director or the Division.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 63, f. 6-6-74, ef. 6-25-74; HD 1-1981, f. & ef. 1-14-81; Renumbered from 333-023-0645; HD 19-1984, f. & ef. 9-10-84; HD 16-1986, f. & ef. 9-9-86; HD 19-1991, f. & cert. ef. 10-18-91; HD 18-1994, f. 6-30-94, cert. ef. 7-1-94,

Renumbered from 333-028-0045; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0140

Maintaining Certified First Responder and EMT Continuing Education Records

(1) A certificate holder is responsible for retaining records that show successful completion of all required continuing education for the two previous certification periods.

(2) The Division will accept as proof of successful completion:

(a) A class roster that contains:

(A) The name of the teaching institution or EMS agency;

(B) The date of the class;

(C) The class topic;

(D) The length of the class;

(E) The full name of the certificate holder attending the class; and

(F) The full name of the instructor.

(b) A computer-generated printout history of the certificate holder's continuing education record that contains:

(A) The full name of the certificate holder;

(B) The name of the teaching institution or EMS agency conducting the classes;

(C) The dates of the classes;

(D) The class topics;

(E) The length of each class; and

(F) The full name of each instructor.

(c) A certificate of course completion for one or more topics that contains:

(A) The name of the teaching institution or EMS agency conducting the course;

(B) The date(s) of the course;

(C) The course topic(s);

(D) The length of the course; and

(E) The full name of the certificate holder attending the course.

(d) If the certificate does not list each course topic, then a copy of the program listing each course topic and length of each presentation must be attached to the certificate.

Stat. Auth.: ORS 682.017, 682.216

Stats. Implemented: ORS 682.017, 682.216

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; OHD 9-2001, f. & cert. ef. 4-24-01; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0150

Certified First Responder and EMT Continuing Education Records Audit

(1) The Division may conduct an audit of a certificate holder's continuing education records:

(a) The Division shall notify the certificate holder by certified mail that he or she is being audited and provide him or her with the necessary audit forms and the date the completed forms are to be returned to the Division; and

(b) Upon the return of the completed audit forms to the Division, the Division shall begin the process of verifying the continuing education records.

(2) If, in the course of an audit of continuing education records, the Division learns that, contrary to the sworn statement in the application for recertification or in the official audit form, the certificate holder has not completed all necessary continuing education requirements, the Division may:

(a) Discipline the certificate holder as set out in OAR 333-265-0080;

(b) Assess a monetary penalty in the amount of \$10 per each hour of deficient continuing education; or

(c) Require the certificate holder to demonstrate his or her knowledge and psychomotor skills by taking and passing a cognitive and practical examination conducted by the Division.

(3) The actions taken by the Division in section (2) of this rule will be done in accordance with ORS Chapter 183.

Stat. Auth.: ORS 682.017, 682.216, 682.220, 682.224

Stats. Implemented: ORS 682.017, 682.208, 682.220, 682.224

Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

333-265-0160

Certificate Holder's Responsibility to Notify the Division of Changes

A certificate holder must keep the Division apprised of and report the following changes within 30 calendar days of a change in:

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(1) EMS Medical Director, unless the certificate holder is affiliated with an EMS agency that is on file with the Division.

- (2) Legal name;
- (3) Home address;
- (4) Main contact phone number; or
- (5) EMS affiliation.

Stat. Auth.: ORS 682.017, 682.208, 682.220, 682.224
Stats. Implemented: ORS 682.017, 682.208, 682.220, 682.224
Hist.: HD 18-1994, 6-30-94, cert. ef. 7-1-94; HD 8-1995, f. & cert. ef. 11-6-95; OHD 9-2001, f. & cert. ef. 4-24-01; PH 10-2008, f. & cert. ef. 6-16-08; PH 13-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Updating rule for medical marijuana pertaining to application documentation submitted.

Adm. Order No.: PH 14-2010(Temp)

Filed with Sec. of State: 7-6-2010

Certified to be Effective: 7-6-10 thru 12-31-10

Notice Publication Date:

Rules Amended: 333-008-0020

Subject: The Department of Human Services, Public Health Division, Oregon Medical Marijuana Program (OMMP) is temporarily amending OAR 333-008-0020 in order to clarify the procedures regarding acceptable documentation accompanying an application for the registry. Current administrative rules require Oregon identification and proof of Oregon residency in order to get an OMMP card. The Oregon Department of Justice has advised the OMMP that the Oregon Medical Marijuana Act (OMMA) is not limited to residents of Oregon and that the OMMP cannot, in rule, have an Oregon residency requirement. In order to fully comply with the OMMA, the OMMP must immediately amend its rules to accept identification from non-residents.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-008-0020

New Registration Application and Verification

(1) A person may apply for a registry identification card on a form prescribed by the Department. 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, current, and valid U.S. government issued photographic identification from the applicant, the designated primary caregiver, and grower, as applicable. Acceptable forms of government issued photographic identification include but are not limited to:

- (A) Driver's license;
- (B) State identification card;
- (C) Passport; or
- (D) Military identification card;

(c) 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 Department, 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) A completed "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; and

(e) An application fee in the form of cash, bank check, or personal check. The Department will place a 10-day hold on the issuance of a registry identification card for an application accompanied by a personal check. An applicant will be given 14 days from Department receipt of non-sufficient funds (NSF) or stop payment notification to submit payment in the form of a bank check or cash.

(2) An applicant may only name, and the Department will only register, one designated primary caregiver and one grower.

(3) For applications received on or after December 1, 2005, the fee for a new application is \$100.00, unless an applicant can demonstrate current eligibility in the OHP, receipt of current food stamp benefits, or receipt of current SSI benefits, in which case the application fee is \$20.00.

(a) To qualify for a reduced fee on the basis of current eligibility in the OHP, an applicant must provide a copy of the applicant's current eligibility statement.

(b) To qualify for a reduced fee on the basis of receipt of current SSI benefits, an applicant must provide a copy of a current monthly SSI benefit card, showing dates of coverage.

(c) To qualify for a reduced fee on the basis of receipt of current food stamp benefits, an applicant must be current in the Food Stamp Management Information System database system or provide a current copy of food stamp benefit identification card.

(4) The Department 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 Department 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 Board of Medical Examiners 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 Department will 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;

(e) Contacting the OHP, DHS-Self Sufficiency, or Social Security Administration (SSA) to verify eligibility for benefits; and

(f) Conducting criminal records check under ORS 181.534 of any person whose name is submitted as a grower.

(5) The Department will notify an applicant who submits a reduced fee for which the applicant is not eligible and will give the applicant 14 days from the date of notice to pay the correct fee, submit a current, valid eligibility determination statement for the OHP, current copy of food stamp benefit identification card, or to submit a copy of a receipt for current SSI monthly benefit, as applicable. The Department will continue to process the application pending receipt of an eligibility statement. The Department will not grant an application fee refund for any eligibility determination made on or after the date of issuance of the applicant's registry identification card.

(6) If an applicant does not provide all the information required and the application is considered incomplete, the Department shall notify the applicant of the information that is missing, and shall give the applicant 14 days to submit the missing information.

(7) If the Department 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.

(8) 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 (6) and (7) of this rule, the application will be returned to the applicant as incomplete, along with the application fee. An applicant whose application is returned as incomplete may reapply at any time.

(9) 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 calling 971-673-1226.

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

Rule Caption: Health Care Interpreter Language Proficiency Testing and Certification.

Adm. Order No.: PH 15-2010(Temp)

Filed with Sec. of State: 7-13-2010

Certified to be Effective: 7-15-10 thru 1-10-11

Notice Publication Date:

Rules Amended: 333-002-0040, 333-002-0060

Subject: The Department of Human Services, Public Health Division is temporarily amending Oregon Administrative Rules in chapter 333, division 2 relating to health care interpreters. These amendments are necessary in order for the Department to implement the rules to meet National Standards of Practice of Health Care Interpreters (HCI) and to enable us to contract with testing centers in order for the State of Oregon to be in compliance with the Qualification

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portion of the rule (testing language proficiency of interpreters) and to work towards contracting with a national testing center(s) to implement the Certification portion of rule.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-002-0040

Eligibility Standards for Registry Enrollment, Qualification and Certification

(1) Applicants seeking enrollment in the Health Care Interpreter registry must:

- (a) Be at least 18 years of age;
- (b) Submit applicable forms and fees (as established in OAR 333-002-0035);
- (c) Successfully complete the Health Care Interpreter orientation session provided by the Department;
- (d) Abide by the National Code of Ethics for Interpreters in Health Care as established by OAR 333-002-0100;
- (e) Abide by the National Standards of Practice for Interpreters in Health Care as established by OAR 333-002-0110; and
- (f) Have a high school diploma or a General Education Diploma (GED) from an accredited school in the United States of America; or an equivalent diploma from another country that shall be validated by the issuing country's embassy or consulate in the United States.

(2) In addition to complying with the requirements set out in section (1) of this rule, applicants seeking qualification must be able to:

- (a) Provide written verification of at least 40 hours of formal training as defined in OAR 333-002-0060;
- (b) Provide verifiable evidence of 200 hours of working experience; and

(c) Demonstrate health care interpreting knowledge by passing a qualification skill evaluation offered by a language proficiency testing center approved by the Department as defined in OAR 333-002-0070.

(3) In addition to complying with the requirements set out in section (1) of this rule, applicants seeking certification must be able to:

- (a) Provide written verification of at least 40 hours of formal training as defined in OAR 333-002-0060;
- (b) Provide verifiable evidence of one year of working experience as a health care interpreter; and
- (c) Demonstrate health care interpreting proficiency by passing a certification test offered by a testing center approved by the Department as defined in OAR 333-002-0070.

(4) The Department will accept formal training from entities outside of Oregon who can demonstrate that their criteria are equal to or exceed Oregon criteria as established by this division and Department policy. The Department shall keep a list of approved training centers where the applicant may receive the required education.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621, 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06; PH 15, 2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 1-10-11

333-002-0060

Training Requirement and Working Experience Requirement

(1) Qualified and Certified Health Care Interpreter applicants must provide written verification of the successful completion of formal training at a Department approved training center. Required subjects include Medical Terminology, Anatomy, Physiology, Concepts and Modes of Health Care Interpreting, and Health Care Interpreting Ethics. Applicants must meet or exceed the minimum training requirements for the credential being sought.

(2) Each Qualified and Certified Health Care Interpreter applicant must complete at least 40 hours of Department approved training, including a minimum of:

- (a) Thirty-two hours of integrated Medical Terminology, Anatomy and Physiology, Introductory Health Care Interpreting Concepts and Modes; and
 - (b) Eight hours of Health Care Interpreting Ethics.
- (c) Each Qualified Health Care Interpreter applicant must show proof of 200 working hours as a health care interpreter by providing a notarized letter from an employer where the applicant has previously worked.

(d) Each Certified Health Care Interpreter applicant must show proof of 2040 working professional hours as a health care interpreter by providing a notarized letter from an employer where the applicant has previously worked.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621, 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 15, 2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 1-10-11

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Department of Human Services, Seniors and People with Disabilities Division Chapter 411

Rule Caption: Homecare Workers Enrolled in the Client-Employed Provider Program.

Adm. Order No.: SPD 4-2010(Temp)

Filed with Sec. of State: 6-23-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Amended: 411-031-0020, 411-031-0040

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending OAR 411-031-0020 and OAR 411-031-0040 to implement ORS 443.004 (House Bill 2442) by disallowing initial or continued enrollment as a homecare worker in the Client-Employed Provider Program if an individual has been convicted of a disqualifying crime under OAR 407-007-0275.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-031-0020

Definitions

(1) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior as defined in OAR 411-015-0006.

(2) "Adult Protective Services" mean the services to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income, as described in OAR chapter 411, division 020.

(3) "Area Agency on Aging (AAA)" means the Department of Human Services designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For purposes of these rules, the term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(4) "Bargaining Agreement" means the 2009-2011 Collective Bargaining Agreement between the Home Care Commission and the Service Employee's International Union, Local 503, Oregon Public Employees' Union.

(5) "Burden of Proof" means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(6) "Career Homecare Worker" means a homecare worker with an unrestricted provider enrollment. A career homecare worker has a provider enrollment that allows him or her to provide services to any eligible in-home services client. At any given time, a career homecare worker may choose not to be referred for work.

(7) "Case Manager" means an employee of the Department of Human Services or Area Agency on Aging who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements the service plan, and monitors the services delivered.

(8) "Client" or "Client-Employer" means the individual eligible for in-home services. "Individual" is synonymous with client.

(9) "Client-Employed Provider Program (CEP)" refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer and employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(10) "Companionship Services" mean those services designated by the Department of Labor as meeting the personal needs of a client. Companionship services are exempt from federal and state minimum wage laws.

(11) "DHS" means the Department of Human Services.

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

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(13) "Fiscal Improprieties" means the homecare worker committed financial misconduct involving the client's money, property, or benefits. Fiscal improprieties include but are not limited to financial exploitation, borrowing money from the client, taking the client's property or money, having the client purchase items for the homecare worker, forging the client's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(14) "Homecare Worker (HCW)" means a provider, as described in OAR 411-031-0040, that is directly employed by the client and provides either hourly or live-in services to eligible clients. The term homecare worker includes client-employed providers in the Spousal Pay and Oregon Project Independence Programs. It also includes client-employed providers that provide state plan personal care services to seniors and people with physical disabilities. Homecare worker does not include Independent Choices Program providers or personal care attendants enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(15) "Hourly Services" mean the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(16) "Imminent Danger" means there is reasonable cause to believe a person's life or physical, emotional, or financial well-being is in danger if no intervention is immediately initiated.

(17) "In-Home Services" mean those activities of daily living and self-management tasks that assist an individual to stay in his or her own home.

(18) "Lack of Ability or Willingness to Maintain Client-Employer Confidentiality" means the homecare worker is unable or unwilling to keep personal information about their client-employer private.

(19) "Lack of Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means the homecare worker does not possess the skills to perform services needed by clients of the Seniors and People with Disabilities Division. The homecare worker may not be physically, mentally, or emotionally capable of providing services to seniors and persons with disabilities. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(20) "Live-In Services" mean those Client-Employed Provider Program services provided when a client requires activities of daily living, self-management tasks, and twenty-four hour availability. Time spent by any live-in homecare worker doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements.

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

(22) "Oregon Project Independence (OPI)" means the program of in-home services described in OAR chapter 411, division 032.

(23) "Preponderance of the Evidence" means that one party's evidence is more convincing than the other party's.

(24) "Provider" means the person who actually renders the service.

(25) "Provider Enrollment" means a homecare worker's authorization to work as a provider employed by the client for the purpose of receiving payment for authorized services provided to clients of the Seniors and People with Disabilities Division. Provider enrollment includes the issuance of a provider number.

(26) "Provider Number" means an identifying number issued to each homecare worker who is enrolled as a provider through the Seniors and People with Disabilities Division.

(27) "Restricted Homecare Worker" means the Seniors and People with Disabilities Division or Area Agency on Aging has placed restrictions on an individual homecare workers' provider enrollment as described in OAR 411-031-0040.

(28) "Self-Management Tasks" or "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in self-management tasks are identified in OAR 411-015-0007.

(29) "Services are Not Provided as Required" means the homecare worker does not provide the services to the client as described in the service plan authorized by the Seniors and People with Disabilities Division.

(30) "SPD" means the Department of Human Services, Seniors and People with Disabilities Division.

(31) "These Rules" mean the rules in OAR chapter 411, division 031.

(32) "Twenty-Four Hour Availability" means the availability and responsibility of a homecare worker to meet activities of daily living and self-management needs of a client as required by that client over a twenty-four hour period. Twenty-four hour services are provided by a live-in homecare worker and are exempt from federal and state minimum wage and overtime requirements.

(33) "Unacceptable Conduct at Work" means the homecare worker has repeatedly engaged in one or more of the following behaviors:

(a) Delay in their arrival to work or absences from work not prior-scheduled with the client, that are either unsatisfactory to the client or that neglect the client's service needs; or

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

(34) "Unacceptable Criminal Records Check" means information related to an individual's criminal records check precludes them from being a homecare worker for the following reasons:

(a) The individual applying to be a homecare worker has been convicted of a disqualifying crime described in OAR 407-007-0275;

(b) A homecare worker employed after July 28, 2009 has been convicted of a disqualifying crime described in OAR 407-007-0275; or

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

(35) "Violation of a Drug-Free Workplace" means there was a substantiated complaint against the homecare worker for:

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

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

(36) "Violations of Protective Service and Abuse Rules" means the homecare worker violated the protective service and abuse rules in OAR chapter 411, division 020.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2005(Temp), f. & cert. ef. 11-16-05 thru 5-15-06; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

411-031-0040

Client-Employed Provider Program

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes the provider shall be required for activities of daily living and self-management tasks and twenty-four hour availability. To ensure continuity of service for the client, live-in service plans must include at least one homecare worker providing twenty-four hour availability for a minimum of five days in a calendar week. The hourly structure assumes the provider shall be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both hourly and live-in providers.

(1) **EMPLOYMENT RELATIONSHIP.** The relationship between the provider and the client is that of employee and employer.

(2) **CLIENT-EMPLOYER JOB DESCRIPTIONS.** Each client-employer is responsible for creating and maintaining a job description for the potential employee in coordination with the services authorized by the client's case manager.

(3) **HEMOCARE WORKER LIABILITIES.** The only benefits available to homecare workers are those negotiated in the bargaining agreement and as provided in Oregon Revised Statute. This agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare workers are not state employees.

(4) **CLIENT-EMPLOYER ABSENCES.** When a client-employer is absent from the home due to an illness or medical treatment and is expected to return to the home within a 30 day period, a live-in provider, that is the only live-in provider for that client, may be retained to ensure the live-in provider's presence upon the client-employer's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal pay providers are not eligible for payment during the absence of the client-employer.

(5) **SELECTION OF HEMOCARE WORKER.** The client-employer carries primary responsibility for locating, interviewing, screening, and hir-

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ing his or her own employees. The client-employer has the right to employ any person who successfully meets the provider enrollment standards described in section (8) of this rule. The SPD/AAA office shall determine whether the employee meets minimum qualifications to provide the authorized services paid by SPD.

(6) **EMPLOYMENT AGREEMENT.** The client-employer retains the full right to establish the employer-employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. SPD may not guarantee payment for those services until all acceptable enrollment standards have been verified and both the employer and homecare worker have been formally notified in writing that payment by SPD is authorized.

(7) **TERMS OF EMPLOYMENT.** The terms of the employment relationship are the responsibility of the client-employer to establish at the time of hire. These terms of employment may include dismissal or resignation notice, work scheduling and absence reporting, as well as any sleeping arrangements or meals provided for live-in or hourly employees.

(8) **PROVIDER ENROLLMENT.**

(a) **ENROLLMENT STANDARDS.** A homecare worker must meet all of the following standards to be enrolled with SPD's Client-Employed Provider Program:

(A) The homecare worker must maintain a drug-free work place.

(B) The homecare worker must complete the criminal records check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions. SPD/AAA may allow a homecare worker to work on a preliminary basis in accordance with OAR 407-007-0315 if the homecare worker meets the other provider enrollment standards described in section (8) of this rule.

(C) The homecare worker must have the skills, knowledge, and ability to perform, or to learn to perform, the required work.

(D) The homecare worker's U.S. employment authorization must be verified.

(E) The homecare worker must be 18 years of age or older. SPD Central Office may approve a restricted enrollment, as described in section (8)(d) of this rule, for a homecare worker who is at least sixteen years of age.

(F) The homecare worker must complete an orientation as described in section (8)(e) of this rule.

(b) SPD/AAA may deny an application for provider enrollment in the Client-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge, or ability to adequately or safely provide services;

(D) The applicant has an unacceptable criminal records check;

(E) The applicant is not 18 years of age;

(F) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other Federal Health Care Programs; or

(G) SPD/AAA has information that enrolling the applicant as a homecare worker may put vulnerable clients at risk.

(c) **CRIMINAL RECORDS RECHECKS.** Criminal records rechecks shall be conducted at least every other year from the date the homecare worker is enrolled. SPD/AAA may conduct a recheck more frequently based on additional information discovered about the homecare worker, such as possible criminal activity or other allegations.

(A) When a homecare worker is approved without restrictions following a criminal records check fitness determination, the approval must meet the homecare worker provider enrollment requirement statewide whether the qualified entity is a state-operated SPD office or an AAA operated by a county, council of governments, or a non-profit organization.

(B) Criminal records check approval is effective for two years unless:

(i) Based on possible criminal activity or other allegations against the homecare worker, a new fitness determination is conducted resulting in a change in approval status; or

(ii) The approval has ended because DHS has inactivated or terminated the homecare worker's provider enrollment for one or more reasons described in this rule or OAR 411-031-0050.

(C) Prior criminal records check approval for another DHS provider type is inadequate to meet criminal records check requirements for homecare worker enrollment.

(d) **RESTRICTED PROVIDER ENROLLMENT.**

(A) SPD/AAA may enroll an applicant as a restricted homecare worker. A restricted homecare worker may only provide services to specific individuals.

(i) Unless convicted of a disqualifying crime described in OAR 407-007-0275, SPD/AAA may approve a homecare worker with prior criminal records under a restricted enrollment to provide services only to specific individuals who are family members, neighbors, or friends after conducting a weighing test as described in OAR 407-0200 to 407-007-0370.

(ii) Based on the applicant's lack of skills, knowledge, or abilities, SPD/AAA may approve an applicant as a restricted homecare worker to provide services only to specific individuals who are family members, neighbors, or friends.

(iii) Based on an exception to the age requirements for provider enrollment approved by SPD Central Office as described in section (8)(a)(E) of this rule, a homecare worker who is at least 16 years of age may be approved as a restricted homecare worker.

(B) To remove restricted homecare worker status and be designated as a career homecare worker, the applicant must complete a new application and criminal records check and be approved by SPD/AAA.

(e) **HEMOCARE WORKER ORIENTATION.** Homecare workers must participate in an orientation arranged through a SPD/AAA office. The orientation shall occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific SPD/AAA clients. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a homecare worker fails to complete an orientation within 90 days of provider enrollment, their provider number shall be inactivated and any authorization for payment of services shall be discontinued.

(f) A homecare worker's provider enrollment may be inactivated when:

(A) The homecare worker has not provided any paid services to any client in the last 12 months;

(B) The homecare worker's criminal records check results in a closed case pursuant to OAR 407-007-0325;

(C) The homecare worker informs SPD/AAA they will no longer be providing homecare worker services in Oregon;

(D) The provider fails to participate in a homecare worker orientation arranged through an SPD/AAA office within 90 days of provider enrollment; or

(E) The homecare worker, who at the time is not providing any paid services to clients, is being investigated by Adult Protective Services for suspected abuse that poses imminent danger to current or future clients.

(9) **PAID LEAVE.**

(a) **LIVE-IN HEMOCARE WORKERS.** Irrespective of the number of clients served, SPD shall authorize one 24-hour period of leave each month when a live-in homecare worker or spousal pay provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in homecare worker shall receive a proportional share of that 24-hour period of leave authorization. A prorated share of the 24-hours shall be allocated proportionately to each live-in when there is more than one live-in provider per client.

(A) **ACCUMULATION AND USAGE FOR LIVE-IN PROVIDERS.** A provider may not accumulate more than 144 hours of accrued leave. The employer, homecare worker, and case manager shall coordinate the timely use of these hours. Live-in homecare workers must take vacation leave in 24-hour increments or in hourly increments of at least 4 but not more than 12 hours. Accrued leave must be taken while employed as a live-in.

(B) **THE RIGHT TO RETAIN LIVE-IN PAID LEAVE.** The homecare worker retains the right to access earned paid leave when terminating employment with one employer, so long as the homecare worker is employed with another employer as a live-in within one year of separation.

(C) **TRANSFERABILITY OF LIVE-IN PAID LEAVE.** Live-in homecare workers who convert to hourly or separate from live-in service and return as an hourly homecare worker within one year from the last day of live-in services shall be credited with their unused hours of leave up to a maximum of 32 hours.

(D) **CASH OUT OF PAID LEAVE.**

(i) DHS shall pay live-in homecare workers 50 percent of all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced 50 percent with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may only be paid up to the amount of remaining unused paid leave.

(iii) Effective November 6, 2009, a live-in homecare worker providing live-in services seven days per week for one client-employer may submit a request for payment of 100 percent of unused paid leave if:

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(I) The live-in homecare worker's client-employer is no longer eligible for in-home services described in OAR chapter 411, division 030; and

(II) The live-in homecare worker does not have alternative residential housing.

(iv) If a request for payment of 100 percent of unused paid leave based on sections (9)(a)(D)(iii)(I) and (II) of this rule is granted, the homecare's paid leave balance is reduced to zero.

(b) **HOURLY HOMECARE WORKERS.** On July 1st of each year, active homecare workers who worked 80 authorized and paid hours in any one of the three months that immediately precede July (April, May, June) shall be credited with one 16 hour block of paid leave to use during the current fiscal biennium (July 1 through June 30) in which it was accrued. On February 1st of each year, active employees who worked 80 authorized and paid hours in any one of the three months that immediately precede February (November, December, January) shall be credited with 16 hours of paid time off. One 16 hour block of paid leave shall be credited to each eligible homecare worker, irrespective of the number of clients they serve. Such leave may not be cumulative from biennium to biennium.

(A) **UTILIZATION OF HOURLY PAID LEAVE.**

(i) Time off must be utilized in one eight hour block subject to authorization. If the homecare worker's normal workday is less than eight hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block.

(ii) Hourly homecare workers may take unused paid leave when their employer is temporarily unavailable for the homecare worker to provide services.

(B) **LIMITATIONS OF HOURLY PAID LEAVE.** Homecare workers may not be compensated for paid leave unless the time off work is actually taken except as noted in section (9)(b)(D) of this rule.

(C) **TRANSFERABILITY OF HOURLY PAID LEAVE.** An hourly homecare worker who transfers to work as a live-in homecare worker (within the biennium that their hourly leave is earned) shall maintain their balance of hourly paid leave and begin accruing live-in paid leave.

(D) **CASH OUT OF PAID LEAVE.**

(i) DHS shall pay hourly providers for all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced to zero with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may not be paid if paid leave has already been cashed out.

(10) **SPD FISCAL AND ACCOUNTABILITY RESPONSIBILITY.**

(a) **DIRECT SERVICE PAYMENTS.** SPD shall make payment to the provider on behalf of the client for all in-home services. This payment shall be considered full payment for the services rendered under Title XIX. Under no circumstances is the homecare worker to demand or receive additional payment for these Title XIX-covered services from the client or any other source. Additional payment to homecare workers for the same services covered by Oregon's Title XIX Home and Community Based Services Waiver is prohibited.

(b) **TIMELY SUBMISSION OF CLAIMS.** In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) **ANCILLARY CONTRIBUTIONS.**

(A) **FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA).** Acting on behalf of the client-employer, SPD shall apply any applicable FICA regulations and shall:

(i) Withhold the homecare worker-employee contribution from payments; and

(ii) Submit the client-employer contribution and the amounts withheld from the homecare worker-employee to the Social Security Administration.

(B) **BENEFIT FUND ASSESSMENT.** The Workers' Benefit Fund pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist employers in helping injured workers return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. SPD 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 client-employer, SPD shall:

(i) Deduct the homecare worker-employees' share of the Benefit Fund assessment rate for each hour or partial hour worked by each paid homecare worker;

(ii) Collect the client-employer's share of the Benefit Fund assessment for each hour or partial hour of paid services received; and

(iii) Submit the client and homecare worker's contributions to the Workers' Benefit Fund.

(C) SPD shall pay the employer's share of the unemployment tax.

(d) **ANCILLARY WITHHOLDINGS.** For the purposes of section 10(d) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) SPD shall deduct from the homecare worker's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with SPD to pay the actual administrative costs of the deductions.

(C) SPD shall pay the deducted amount monthly to the designated labor organization.

(e) **STATE AND FEDERAL INCOME TAX WITHHOLDING.**

(A) SPD shall withhold state and federal income taxes on all payments to homecare workers, as indicated in the bargaining agreement.

(B) Homecare workers must complete and return a current Internal Revenue Service W-4 form to the local office. SPD shall apply standard income tax withholding practices in accordance with the Code of Federal Regulations, Title 26, Part 31 (26 CFR 31).

(11) **HOMECARE WORKER EXPENSES SECONDARY TO PERFORMANCE OF DUTIES.**

(a) Providers may be reimbursed at \$0.485 cents per mile effective October 1, 2007 when they use their own car for service plan related transportation, if prior authorized by the case manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the DHS, Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in the service plan shall be considered a prior resource.

(c) DHS is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for DMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) **BENEFITS.** Workers' compensation as defined in Oregon Revised Statute and health insurance are available to eligible homecare workers as defined in the bargaining agreement. In order to receive homecare worker services, the client-employer must provide written authorization and consent to SPD for the provision of workers' compensation insurance for their employee.

(13) **OVERPAYMENTS.** An overpayment is any payment made to a homecare worker by SPD that is more than the person is authorized to receive.

(a) Overpayments are categorized as follows:

(A) **Administrative error overpayment.** Occurs when SPD failed to authorize, compute, or process the correct amount of in-home service hours or wage rate.

(B) **Provider error overpayment.** Occurs when SPD overpays the homecare worker due to a misunderstanding or unintentional error.

(C) **Fraud overpayment.** "Fraud" means taking actions that may result in 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 provider was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). SPD shall determine, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Unit shall determine when a Medicaid fraud allegation shall be pursued for prosecution.

(b) Overpayments are recovered as follows:

(A) Overpayments shall be collected prior to garnishments, such as child support, Internal Revenue Service back taxes, and educational loans.

(B) Administrative or provider error overpayments shall be collected at no more than 5 percent of the homecare worker's gross wages.

(C) SPD shall determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as homecare workers shall have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050 & 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612 & 410.614

Hist.: SPD 17-2004, f. 5-28-04, cert. ef. 6-1-04; SPD 40-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 10-2005, f. & cert. ef. 7-1-05; SPD 15-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 28-2006(Temp), f. 10-18-06, cert. ef. 10-23-06 thru 4-20-07; SPD 4-2007, f. 4-12-07, cert. ef. 4-17-07; SPD 18-2007(Temp), f. 10-30-07, cert. ef. 11-1-07 thru 4-29-08; SPD

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6-2008, f. 4-28-08, cert. ef. 4-29-08; SPD 16-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10; SPD 3-2010, f. 5-26-10, cert. ef. 5-30-10; SPD 4-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 12-28-10

Rule Caption: Services for Individuals with Developmental Disabilities.

Adm. Order No.: SPD 5-2010

Filed with Sec. of State: 6-29-2010

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Rules Amended: 411-300-0110, 411-300-0155, 411-300-0170, 411-300-0200, 411-300-0220, 411-305-0010, 411-305-0020, 411-305-0023, 411-305-0050, 411-305-0090, 411-305-0110, 411-305-0115, 411-305-0140, 411-308-0020, 411-308-0030, 411-308-0090, 411-308-0100, 411-308-0110, 411-308-0130, 411-320-0020, 411-320-0030, 411-320-0140, 411-325-0020, 411-325-0100, 411-325-0160, 411-325-0190, 411-328-0560, 411-328-0610, 411-328-0670, 411-330-0010, 411-330-0020, 411-330-0060, 411-330-0070, 411-330-0100, 411-330-0120, 411-330-0140, 411-330-0160, 411-335-0020, 411-335-0030, 411-335-0100, 411-340-0020, 411-340-0030, 411-340-0040, 411-340-0050, 411-340-0070, 411-340-0080, 411-340-0130, 411-340-0140, 411-340-0160, 411-350-0020, 411-350-0050, 411-350-0080, 411-350-0110, 411-350-0120, 411-355-0010, 411-355-0040, 411-355-0050, 411-355-0060, 411-355-0090, 411-355-0120

Rules Repealed: 411-300-0110(T), 411-300-0155(T), 411-300-0170(T), 411-300-0200(T), 411-300-0220(T), 411-305-0010(T), 411-305-0020(T), 411-305-0023(T), 411-305-0110(T), 411-305-0115(T), 411-305-0140(T), 411-308-0020(T), 411-308-0030(T), 411-308-0090(T), 411-308-0100(T), 411-308-0110(T), 411-308-0130(T), 411-320-0020(T), 411-320-0030(T), 411-320-0140(T), 411-325-0020(T), 411-325-0100(T), 411-325-0160(T), 411-325-0190(T), 411-328-0560(T), 411-328-0610(T), 411-328-0670(T), 411-330-0010(T), 411-330-0020(T), 411-330-0060(T), 411-330-0070(T), 411-330-0100(T), 411-330-0120(T), 411-330-0140(T), 411-330-0160(T), 411-335-0020(T), 411-335-0030(T), 411-335-0100(T), 411-340-0020(T), 411-340-0030(T), 411-340-0040(T), 411-340-0050(T), 411-340-0070(T), 411-340-0080(T), 411-340-0130(T), 411-340-0140(T), 411-340-0160(T), 411-350-0020(T), 411-350-0050(T), 411-350-0080(T), 411-350-0110(T), 411-350-0120(T), 411-355-0010(T), 411-355-0040(T), 411-355-0050(T), 411-355-0060(T), 411-355-0090(T), 411-355-0120(T)

Subject: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is permanently amending:

- Various rules relating to services for individuals with developmental disabilities to implement House Bill 2442 (2009);
- OAR 411-305-0050 to clarify age criteria for family support service eligibility by reflecting services end the day before the individual's 18th birth date;
- OAR 411-305-0090 to clarify that the amount of direct assistance or immediate access funds shall be determined by the community developmental disability program per child instead of per family; and.
- OAR 411-308-0090 to remove language that prohibits the use of Medicaid state plan personal care services in conjunction with long-term support services for children with developmental disabilities.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-300-0110

Definitions

- (1) "Abuse" means abuse of a child as defined in ORS 419B.005.
- (2) "Activities of Daily Living (ADL)" mean activities usually performed in the course of a normal day in a child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).
- (3) "Assistant Director" means the assistant director of the Division, or that person's designee.
- (4) "Behavior Consultant" means a contractor with specialized skills who develops a Behavior Support Plan.

(5) "Behavior Criteria (Form DHS-0521)" means the assessment tool used by the Division to evaluate the intensity of the challenges and care needs presented by children applying for, or eligible for, children's intensive in-home services, and to determine the service budget for eligible children.

(6) "Billing Provider" means an organization that enrolls and contracts with the Division to provide services through its employees and bills the Division for the provider's services.

(7) "Child" means an individual under the age of 18, eligible for developmental disability services, and accepted for children's intensive in-home services under the ICF/MR Behavioral Waiver.

(8) "CIIS" means children's intensive in-home services.

(9) "Cost Effective" means that in the opinion of the services coordinator, a specific service or item of equipment meets the child's needs and costs less than, or is comparable to, other service or equipment options considered.

(10) "Daily Activity Logs" mean the records of services provided to the child. The content and form of daily activity logs is agreed upon by both the child's parent and the services coordinator and documented in the Plan of Care.

(11) "Department" means the Department of Human Services (DHS).

(12) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the conditions must be manifested before the age of 18;

(b) Originates in and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(13) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(14) "Exit" means termination of a child from children's intensive in-home services.

(15) "Family Home" means a child's primary residence that is not under contract with the Department to provide services as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(16) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(17) "ICF/MR Behavioral Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Medicaid funds to be spent on children living in the family home who otherwise would have to be served in an intermediate care facility for the mentally retarded if the waiver program was not available.

(18) "In-Home Daily Care (IHDC)" means Medicaid state plan funded essential supportive daily care delivered by a qualified provider that enables a child to remain in, or return to, the family home.

(19) "Mandatory Reporter" means any public or private official who comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(20) "Parent" means biological parent, adoptive parent, stepparent, or legal guardian.

(21) "Plan of Care" means a written document developed and renewed annually for each eligible child by the services coordinator and the parent that describes the individual needs of the child, the needs and resources of the family that impact the child, and how those individual

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needs shall be met with family and public resources. The Plan of Care includes the Nursing Care Plan when one exists.

(22) "Positive Behavioral Theory and Practice" means a proactive approach to individual 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 abuse or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(23) "Primary Caregiver" means the child's parent, guardian, relative, or other non-paid parental figure that provides the direct care of the child at the times that a paid provider is not available.

(24) "Provider or Performing Provider" means the person who is qualified to receive payment from the Division for in-home daily care that meets the requirements of OAR 411-300-0170. Providers work directly with children. Providers may be employees of billing providers, employees of the parent, or independent contractors.

(25) "Respite" means short-term care and supervision provided on a periodic or intermittent basis because of the temporary absence of, or need for relief of, the primary caregiver.

(26) "Service Budget" means the annual dollar amount allotted for the care of the child based on the behavior criteria level of care determination. The service budget consists of in-home daily care and waived services. The monthly service budget is 1/12th of the annual amount if the Plan of Care is developed for less than a full year. The service budget is flexible and may be distributed as necessary to meet the needs of the child as outlined in the Plan of Care.

(27) "Services Coordinator" means an employee of the Division, who ensures a child's eligibility for children's intensive in-home services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

(28) "Social Benefit" means a service or financial assistance provided to a family solely intended to assist a child to function in society on a level comparable to that of a person who does not have a developmental disability. Social benefits are pre-authorized by, and provided according to, the description and financial limits written in an eligible child's Plan of Care. Social benefits may not:

(a) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(b) Replace normal parental responsibilities for the child's services, education, recreation, and general supervision;

(c) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without disabilities;

(d) Replace other governmental or community services available to the child or the child's family; or

(e) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(29) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(30) "Supplant" means take the place of.

(31) "Support" means assistance eligible children and their families require, solely because of the effects of developmental disability on the child, to maintain or increase the child's age-appropriate independence, achieve a child's age-appropriate community presence and participation, and to maintain the child in the family home. Support is flexible and subject to change with time and circumstances.

(32) "These Rules" mean the rules in OAR chapter 411, division 300.

(33) "Waivered Services" mean a menu of disability related services and supplies, exclusive of in-home daily care and the Oregon Health Plan, that are specifically identified by the Medicaid ICF/MR Behavioral Waiver.

(34) "Volunteer" means any person providing services without pay to a child receiving children's intensive in-home services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDDS 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 19-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-300-0155

Using Children's Intensive In-Home Services Funds for Certain Purchases is Prohibited

(1) Effective July 28, 2009, CIIS funds may not be used to support, in whole or in part, a provider in any capacity having contact with a recipient

of children's intensive in-home services who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of a parent or a billing provider who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) CIIS funds may not be used for:

(a) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(b) Services or activities that are carried out in a manner that constitutes abuse of a child;

(c) Services from person who engage in verbal mistreatment and subject a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(d) Services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(e) Purchase of family vehicles;

(f) Purchase of service animals or costs associated with the care of service animals;

(g) Health and medical costs that the general public normally must pay including but not limited to:

(A) Medical treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements and vitamins; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control.

(h) Ambulance services;

(i) Legal fees including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(j) Vacation costs for transportation, food, shelter, and entertainment that are not strictly required by the child's disability-created need for personal assistance in all home and community settings that would normally be incurred by anyone on vacation, regardless of disability;

(k) Services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(l) Unless under certain conditions and limits specified in the Plan of Care, employee wages or contractor payments for services when the child is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(m) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-300-0110;

(n) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(o) Services, activities, materials, or equipment that the Division determines may be reasonably obtained by the family through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(p) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(q) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the Plan of Care, refused to cooperate with record keeping required to document use of CIIS funds, or otherwise knowingly misused public funds associated with CIIS; or

(r) Notwithstanding abuse as defined in ORS 419B.005, services that, in the opinion of the child's services coordinator, are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an individual, including but not limited to the failure to provide an individual with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of an individual by any other person. However, no individual may be considered neglected for the sole reason that the individual relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050 & 417.346

Stats. Implemented: ORS 427.005, 427.007, 430.215

ADMINISTRATIVE RULES

Hist.: SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-300-0170

Standards for Providers and Behavior Consultants

(1) PROVIDER QUALIFICATIONS.

(a) A provider must:

(A) Be at least 18 years of age.

(B) Maintain a drug-free work place.

(C) Provide evidence satisfactory to the Division, or the Division's designee, that demonstrates, by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the services authorized.

(D) Consent to and pass a criminal records check by the Department as described in OAR 407-007-0200 to 407-007-0370, and be free of convictions or founded allegations of abuse by the appropriate agency including but not limited to the Department.

(i) Criminal records rechecks must be performed biannually, or as needed if a report of criminal activity has been received by the Department.

(ii) **PORTABILITY OF CRIMINAL RECORDS CHECK APPROVAL.** Any person meeting the definition of subject individual as defined in OAR 407-007-0200 to 407-007-0370 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0200 to 407-007-0370. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes.

(E) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(F) Not be on the current federal Centers for Medicare and Medicaid Services list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>).

(G) Not be a primary caregiver, parent, step parent, spouse, or legal guardian of the child.

(H) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any in-home daily care services.

(I) Sign a job description prior to delivery of any in-home daily care services.

(b) Section (1)(a)(E) of this rule does not apply to employees of billing providers or employees of the parent who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) A provider is not an employee of the Department or the state of Oregon and is not eligible for state benefits and immunities including but not limited to the Public Employees' Retirement System or other state benefit programs.

(d) If the provider or billing provider is an independent contractor during the terms of the contract, the provider or billing provider must maintain in force at the providers own expense professional liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider or billing provider must provide written evidence of insurance coverage to the Division prior to beginning work and at any time upon request by the Division.

(B) There must be no cancellation of insurance coverage without 30 days written notice to the Division.

(e) If the provider is an employee of the parent, the provider must submit to the Division, documentation of immigration status required by federal statute. The Division maintains documentation of immigration status required by federal statute, as a service to the parent who is the employer.

(f) If the provider is an employee of the parent, both the parent and provider must sign a job description. This job description must be provided to the services coordinator prior to the delivery of any services by the employee.

(g) A billing provider that wishes to enroll with the Division must maintain and submit evidence upon initial application and upon request by the Division of the following:

(A) Current criminal records checks on each employee who provides services in a family home that shows the employee has no disqualifying criminal convictions.

(B) Professional liability insurance that meets the requirements of section (1)(c) of this rule; and

(C) Any licensure required of the agency by the state of Oregon or federal law or regulation.

(h) 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 its designee within 24 hours.

(i) A provider must immediately notify the parent and the services coordinator 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 service required by the child for whom CIIS are being provided.

(j) Providers are mandatory reporters and are required to report suspected child abuse to their local Department office or to the police in the manner described in ORS 419B.010.

(2) **BEHAVIOR CONSULTANTS.** Behavior consultants providing specialized consultations must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services as outlined in OAR 411-300-0150(4);

(b) Have current certification demonstrating completion of training in Oregon Intervention Systems; and

(c) Submit a resume or the equivalent to the Division indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science or related field and at least one year of experience with people with disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with people with disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant as outlined in OAR 411-300-0150(4).

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-300-0150(4).

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDDS 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-300-0200

Payment for Children's Intensive In-Home Services

(1) Payment shall be made after CIIS are delivered as authorized and required documentation received by the services coordinator.

(2) Effective July 28, 2009, payment may not support, in whole or in part, a provider in any capacity having contact with a recipient of children's intensive in-home services who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(3) Section (2) of this rule does not apply to employees of a parent or a billing provider who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(4) Service budgets shall be individually negotiated by the Division based on the individual needs of the child.

(5) Authorization must be obtained prior to the delivery of any CIIS for those services to be eligible for payment.

(6) Providers must request payment authorization for CIIS provided during an unforeseeable emergency on the first business day following the emergency service. The services coordinator must determine if the service is eligible for payment.

(7) The Division shall make payment to the employee of the parent on behalf of the parent. The Division shall pay the employer's share of the Federal Insurance Contributions Act tax (FICA) and withhold the employee's share of FICA as a service to the parent as the employer.

(8) The delivery of authorized CIIS must occur so that any individual employee of the parent does not exceed 40 hours per work week. The Division shall not authorize services that require the payment of overtime, without prior written authorization by the CIIS supervisor.

(9) The Division shall not authorize or pay for any hours of CIIS provided by an individual provider beyond 16 hours in any 24-hour period. Exceptions require written authorization by the CIIS supervisor.

(10) Holidays are paid at the same rate as non-holidays.

(11) Travel time to reach the job site is not reimbursable.

(12) Requests for payments must be submitted to the Division within three months of the delivery of CIIS.

(13) Payment by the Division for CIIS is considered full payment for the services rendered under Medicaid. Under no circumstances, may the provider or billing provider demand or receive additional payment for these services from the parent or any other source.

(14) Medicaid funds are the payor of last resort. The provider or billing provider must bill all third party resources until all third party resources are exhausted.

ADMINISTRATIVE RULES

(15) The Division reserves the right to make a claim against any third party payer before or after making payment to the provider of CIIS.

(16) The Division may void without cause prior authorizations that have been issued.

(17) Upon submission of the billing form for payment, the provider must comply with:

(a) All rules in OAR chapter 407 and OAR chapter 411;

(b) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(18) All billings must be for CIIS provided within the provider's licensure.

(19) The provider must submit true and accurate information on the billing form. Use of a billing provider does not replace the provider's responsibility for the truth and accuracy of submitted information.

(20) No person shall submit to the Division:

(a) A false billing form for payment;

(b) A billing form for payment that has been, or is expected to be, paid by another source; or

(c) Any billing form for CIIS that have not been provided.

(21) The Division shall only make payment to the enrolled provider who actually performs the CIIS or the provider's enrolled billing provider. Federal regulations prohibit the Division from making payment to collection agencies.

(22) Payments may be denied if any provisions of these rules are not complied with.

(23) The Division shall recoup all overpayments. The amount to be recovered:

(a) Is the entire amount determined or agreed to by the Division;

(b) Is not limited to the amount determined by criminal or civil proceedings; and

(c) Includes interest to be charged at allowable state rates.

(24) The Division shall deliver to the provider by registered or certified mail, or in person, a request for repayment of the overpayment or notification of recoupment of future payments.

(25) Payment schedules with the interest may be negotiated at the discretion of the Division.

(26) If recoupment is sought from a parent whose child received CIIS, hearing rights in OAR 411-300-0210 apply.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDDS 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-300-0220

Provider Sanctions for Children's Intensive In-Home Services

(1) Sanctions may be imposed on a provider when any of the following conditions is determined by the Division to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or issuance of a provider number;

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited, or surrendered;

(d) The provider has failed to safely and adequately provide the CIIS authorized as determined by the parent or the services coordinator;

(e) The provider has had a founded report of child abuse or substantiated abuse;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime or substantiation of abuse;

(i) The provider has falsified required documentation;

(j) The provider has not adhered to the provisions of these rules; or

(k) The provider has been suspended or terminated as a provider by another division within the Department.

(2) The Division may impose the following sanctions on a provider:

(a) Termination from providing CIIS;

(b) Suspension from providing CIIS for a specified length of time or until specified conditions for reinstatement are met and approved by the Division; or

(c) Payments to the provider may be withheld.

(3) If the Division makes a decision to sanction a provider, the provider must be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the Division's Assistant Director.

(b) For an appeal to be valid, written notice of the appeal must be received by the Division within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of the Division, providers who have previously been terminated or suspended by any division within the Department may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDDS 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-305-0010

Statement of Purpose, Principles, and Philosophy

(1) PURPOSE. The rules in OAR chapter 411, division 305 prescribe standards, responsibilities, and procedures for providing family support services to children with developmental disabilities and their families within the principles and philosophy that are the foundation of all developmental disability services. Family support services are a social benefit provided to all children with developmental disabilities who are eligible to receive case management services through a community developmental disability program. Family support services and available funding are intended to reach as many children and families as possible and are individualized to each family. Family support services foster and strengthen flexible networks of community-based, private, public, formal, informal, family-centered, and family-directed supports designed to increase families' abilities to care for children with developmental disabilities and to support the integration and inclusion of children with developmental disabilities into all aspects of community life.

(2) PRINCIPLES AND PHILOSOPHY. Family support services are individualized and built on the principles of family support and self-determination. The principles of family support are based on the belief that all person, regardless of disability, chronic illness, or special need, have the right to a permanent and stable family and that supporting families in caring for their children at home is in the best interest of the children, families, and communities. The principles of self-determination are based on the belief that the surest, most cost effective ways to foster and preserve family and community membership may be constructed and managed by those receiving services.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2000, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; 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

411-305-0020

Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" mean activities usually performed in the course of a normal day in a child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Annual Plan" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's Annual Plan articulates decisions and agreements made through a child and family-centered process of planning and information-gathering conducted or arranged for by the child's services coordinator that involves the child (to the extent normal and appropriate for the child's age) and other persons who have been identified and invited to participate by the child's parent or guardian. The child's Annual Plan is the only plan of care required by the Division for a child receiving family support services.

(4) "Assistant Director" means the assistant director of the Division, or that person's designee.

(5) "Case Management" means an organized service to assist individuals to select, obtain, and utilize resources, and monitor services.

(6) "Child" means an individual under the age of 18 and eligible for family support services.

(7) "Child and Family-Centered Planning" means a process, either formal or informal, for gathering and organizing information that:

ADMINISTRATIVE RULES

(a) Facilitates the full participation, choice, and control by families of children with developmental disabilities in decisions relating to the supports that meet the priorities of the family;

(b) Responds to the needs of the entire family in a timely and appropriate manner;

(c) Is easily accessible to and usable by families of children with disabilities;

(d) Helps a child and family to determine and describe choices about the child's life and goals and to design strategies for supporting the child and family in pursuit of these goals;

(e) Helps the child, the family, and others chosen by the child or the child's parent or guardian to identify and use existing abilities, relationships, and resources to strengthen naturally occurring opportunities for support in the family home and in the community; and

(f) Is conducted in a manner and setting consistent with the child's and family's needs and preferences, including but not limited to simple interviews with the child and family, informal observations in the family home and community settings, or formally structured meetings.

(8) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under contract with the Division or a local mental health authority.

(9) "Cost Effective" means that in the opinion of the services coordinator, a specific service or support meets the child's service needs and costs less than, or is comparable to, other service options considered.

(10) "Department" means the Department of Human Services (DHS).

(11) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(12) "Direct Assistance Funds" mean public funds contracted by the Department to the community developmental disability program to assist families with purchase of supports for children in family support services according to each child's assessed need and the child's Annual Plan.

(13) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(14) "Employer-Related Supports" mean activities that assist a family with directing and supervising provision of services described in a child's Annual Plan. Supports to a family assuming the role of employer 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.

(15) "Family" for determining a child's eligibility for family support services as a resident in the family home, for identifying persons who may apply, plan, and arrange for a child's supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one child with developmental disabilities where the primary caregiver is:

(a) Related to the child by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a child in the household with developmental disabilities and the child is related to one of the partners by blood, marriage, or legal adoption.

(16) "Family Home" means a child's primary residence that is not licensed, certified by, and under contract with the Department as a foster

home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(17) "Family Satisfaction" means the extent to which a service or support meets a need, solves a problem, or adds value for a family, as determined by the family receiving the service or support.

(18) "Family Support" means individualized planning and service coordination, assisting families to access information and supports required by the child for the child to live in the family home, and access to funding when available. Supports, resources, and other assistance are designed to:

(a) Support families in their efforts to raise their children with disabilities in the family home;

(b) Strengthen the role of the family as the primary caregiver;

(c) Support families in determining their needs and in making decisions concerning necessary, desirable, and appropriate services;

(d) Promote the use of existing formal and informal supports and social networks, strengthening natural sources of support, and helping build connections to existing community resources and services; and

(e) Involve youth with disabilities in decision-making about their own lives, consistent with their unique strengths, resources, priorities, concerns, abilities, and capabilities.

(19) "Family Support Policy Oversight Group" means a group appointed by the community developmental disability program to provide consumer-based leadership and advice regarding family support issues such as development of policy, evaluation of services, and use of resources. The Family Support Policy Oversight Group may be a subgroup of an advisory body that has a broader scope or it may be a separate body with a specific focus on family support services.

(20) "Fiscal Intermediary" means a person or entity that receives and distributes direct assistance funds on behalf of the family of an eligible child who employs persons to provide services, supervision, or training in the home or community according to the child's Annual Plan.

(21) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(22) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child, and paid with direct assistance funds that:

(a) Is primarily in business to provide the service chosen by the child's parent or guardian to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the child.

(23) "Guardian" means a person or agency appointed by the courts that is authorized by the court to make decisions about services for the child.

(24) "Incident Report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(25) "Independence" means the extent to which individuals exert control and choice over their own lives.

(26) "Independent Provider" means a person selected by a child's parent or guardian and paid with direct assistance funds that personally provide services to the child.

(27) "Individual" means a child with developmental disabilities for whom services are planned and provided.

(28) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources used by and available to other persons;

(b) Participation by individuals in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals reside in homes that are in proximity to community resources and foster contact with persons in their community.

(29) "Mandatory Reporter" means any public or private official who comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

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(30) "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.

(31) "Nursing Care Plan" means a plan of care developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(32) "OHP" means the Oregon Health Plan.

(33) "Parent" means biological parent, adoptive parent, or stepparent.

(34) "Plan Year" The initial plan year begins on the start date specified on the child's first Annual Plan after entry into services are authorized by the child's parent or guardian and the services coordinator and ends in 12 consecutive months. A plan year may not exceed 12 consecutive months.

(35) "Positive Behavioral Theory and Practice" means a proactive approach to individual 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.

(36) "Primary Caregiver" means the child's parent, guardian, relative, or other non-paid parental figure that provides the direct care of the child at the times that a paid provider is not available.

(37) "Provider Organization" means an entity selected by a child's parent or guardian, and paid with direct assistance funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(38) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(39) "Self-Determination" means a philosophy and process by which individuals with developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority. The ability for an individual, with the help of a social support network if needed, to control a certain sum of resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that shall assist an individual to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role in an individual's 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 individuals.

(40) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division, who plans, procures, coordinates, and monitors the child's Annual Plan, and acts as a proponent for children with developmental disabilities and their families.

(41) "Social Benefit" means a service or financial assistance provided to a family solely intended to assist a child to function in society on a level comparable to that of a person who does not have such a developmental disability. Social benefits are pre-authorized by and provided according to the description and financial limits written in an eligible child's Annual Plan. Social benefits may not:

(a) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(b) Replace normal parental responsibilities for the child's services, education, recreation, and general supervision;

(c) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without disabilities;

(d) Replace other governmental or community services available to the child or the child's family; or

(e) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(42) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(43) "Support" means assistance eligible children and their families require, solely because of the effects of developmental disability on the child, to maintain or increase the child's age-appropriate independence, achieve a child's age-appropriate community presence and participation, and to maintain the child in the family home. Support is flexible and subject to change with time and circumstances.

(44) "These Rules" mean the rules in OAR chapter 411, division 305.

(45) "Volunteer" means any person providing services without pay to individuals receiving family support services.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2010, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; 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

411-305-0023

Family Support Services Administration and Operation

(1) FAMILY LEADERSHIP. The CDDP may appoint a Family Support Policy Oversight Group to advise and assist the CDDP in matters related to family support services such as evaluating the effectiveness of family support services, evaluating family satisfaction with family support services, improving availability of resources to meet children's support needs, and developing the plan for management of the direct assistance funds required by OAR 411-305-0090(1). When the CDDP elects to appoint such a group, the CDDP must develop and have available for review brief written descriptions of the group's purpose and scope, how membership is determined, and what process shall be used to resolve concerns or disagreements between the CDDP and the CDDP's Family Support Policy Oversight Group about the provision of family support services.

(2) SERVICES COORDINATOR TRAINING. The CDDP must provide or arrange for services coordinators to receive Division-approved training needed to provide family support services, including but not limited to:

(a) Accessing community resources, information, and referral services;

(b) Child and family-centered planning processes;

(c) Employer-related supports and

(d) Individualized budgeting for supports.

(3) 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 direct assistance funds on behalf of the 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 families who employ persons 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.

(4) GENERAL RECORD REQUIREMENTS.

(a) CONFIDENTIALITY. The CDDP must maintain records of services to individuals 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 individual service records.

(b) DISCLOSURE. For the purpose of disclosure from individual medical records under these rules, CDDPs under these rules shall be considered "providers" as defined in ORS 179.505(1), and 179.505 shall be applicable.

(A) Access to records by the Department does not require authorization by the family.

(B) For the purposes of disclosure from 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(2).

(c) INDIVIDUAL RECORDS. Records for children who receive family support services must be kept up-to-date and must include:

(A) An easily-accessed summary of basic information as described in OAR 411-320-0070(3) including date of enrollment in family support services as well as the date the child was placed on the wait list for direct assistance funds.

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(B) Records related to receipt and disbursement of direct assistance funds, including type of fund used, expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-305-0140, and documentation of family acceptance or delegation of record keeping responsibilities outlined in this rule;

(C) Incident reports involving CDDP staff;

(D) Assessments used to determine supports required, preferences, and resources;

(E) The child's Annual Plan and reviews;

(F) Services coordinator correspondence;

(G) Services coordinator progress notes documenting case management activities, action plans, and outcomes; and

(H) Family satisfaction information.

(d) 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 family support services 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.

(e) 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 individual records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Individual records must be kept for a minimum of seven years.

(5) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to family support services as set forth in OAR 411-320-0170(2)(c).

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2150, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0150, SPD 4-2009, f. & cert. ef. 6-1-09; 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

411-305-0050

Family Support Services Enrollment, Duration, and Exit

(1) ENROLLMENT. A child, who meets the eligibility requirements in OAR 411-305-0030(2), is considered enrolled in family support services when:

(a) The child is enrolled in case management services; and

(b) The family has not declined family support services as documented in the child's Annual Plan.

(2) DURATION OF SERVICES. Once a child has entered a CDDP's family support services, the child and family may continue receiving services from that CDDP through the last day before the child turns 18, as long as the child remains eligible for developmental disability services, the child's Annual Plan is developed and kept current, the need for family support services remains, and the child has not entered Division-funded comprehensive services.

(3) EXIT. A child must leave a CDDP's family support services:

(a) At the written request of the child's parent or guardian to end the service relationship;

(b) On the last day before the child turns 18;

(c) When the child and family moves to a county outside the CDDP's area of service, unless transition services have been previously arranged and authorized by the CDDP; or

(d) 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 Annual Plan development and monitoring activities and does not respond to the notice of intent to terminate; or

(B) The CDDP has sufficient evidence to believe that the family has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Plan, refused to cooperate with documenting expenses, or otherwise knowingly misused public funds associated with family support services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2040, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-305-0090

Managing and Accessing Family Support Funds

(1) The CDDP must develop and implement a written plan for managing access to assistance with purchasing supports through the direct assistance fund using forms and procedures prescribed by the Division that includes but is not limited to:

(a) The number of children anticipated to receive direct assistance funding each year; and

(b) The number of children on the wait list for funding.

(2) The CDDP must review direct assistance fund purchases and obligations at least every 90 days.

(3) DIRECT ASSISTANCE FUNDS. Assistance with the purchase of supports through the direct assistance fund is offered on a first-come, first-served basis consistent with the intent to serve as many children as possible and, unless otherwise approved by the Division on the plan described in section (1) of this rule, as long as direct assistance funds are available. The CDDP must determine the actual amount of funds a child may access per plan year from the direct assistance fund not to exceed the maximum limit established by the Division. Direct assistance funds may be used to purchase one or more of the supports described in OAR 411-305-0120 for children as supported by each child's Annual Plan and supporting expenditure documents.

(4) IMMEDIATE ACCESS FUNDS. The CDDP must utilize the designated percentage of funds established by the Division to address the immediate needs of those children placed on the wait list. The CDDP shall determine the actual amount of funds a child may access per plan year from the immediate access fund not to exceed the maximum limits established by the Division. Immediate access funds may be used to purchase a limited scope of services including:

(a) Respite;

(b) Specialized equipment and supplies; and

(c) Behavior consultation.

(5) Supports for children may not be purchased from direct assistance and immediate access funds concurrently.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2080, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-305-0110

Conditions for Direct Assistance Fund Purchases

(1) A CDDP must only use direct assistance funds to assist families to purchase supports for the purpose defined in OAR 411-305-0010(1) and in accordance with the child's Annual Plan that meets the requirements for development and content in accordance with OAR 411-305-0080.

(2) To be authorized and eligible for payment, all supports and services paid for with direct assistance funds must be determined by the services coordinator to be:

(a) Directly related to the eligible child's developmental disability and support needs;

(b) Used only to purchase goods or services necessary for a child to continue to be supported in the family home;

(c) Cost effective;

(d) Not typical for a family to provide a child of the same age; and

(e) Included in the child's approved Annual Plan and support documents or otherwise allowed in this rule.

(3) Goods and services purchased with direct assistance funds to support specific individual children and families must be provided only as social benefits as defined in OAR 411-305-0020.

(4) The CDDP must arrange for supports purchased with direct assistance funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to freely redirect direct assistance funds to purchase supports and services from another qualified provider.

(A) The CDDP must provide written instruction about the limits and conditions of group services to families who choose to combine direct assistance funds to purchase services and supports from another qualified provider.

(B) Each child's support expenses must be separately projected, tracked, and expensed, including separate contracts, employment agreements, and timekeeping for staff working with more than one child.

(C) The CDDP must evaluate combined arrangements that result in creation of provider organizations or general business providers to determine whether license or certification is required under Oregon law for the organization to provide services for children.

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(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.

(f) In accordance with OAR 411-305-0140 governing provider qualifications.

(5) When direct assistance 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 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 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) Direct assistance 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 direct assistance funds unless another arrangement is agreed upon by the CDDP and described in the child's Annual Plan.

(d) The provisions of section (8) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(6) The method and schedule of payment must be specified in written agreements between the CDDP and the child's parent or guardian and must include:

(a) Payment of vendors for authorized purchases and supplies. The CDDP may reimburse families for prior-authorized purchases and supplies agreed upon in the child's Annual Plan with corresponding purchase receipts.

(b) Payment of qualified providers of direct care 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 Annual Plan have been satisfactorily delivered.

(7) The CDDP must inform families in writing of special records and procedures required in OAR 411-305-0160 regarding expenditure of direct assistance funds. During development of the child's 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.

(8) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.

(a) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with direct assistance funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal records 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) Failed to safely and adequately provide the authorized services;

(E) Had a founded report of child abuse or substantiated abuse;

(F) Failed to cooperate with any Department or CDDP investigation or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (5) of this rule and OAR 411-305-0115; or

(K) Been suspended or terminated as a provider by another division within the Department.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with direct assistance funds;

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or the Division, as applicable; or

(C) The CDDP may withhold payments to the provider.

(c) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; MHD 6-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-2110, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; 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

411-305-0115

Using Direct Assistance Funds for Certain Purchases is Prohibited

(1) Effective July 28, 2009, direct assistance funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of parents, employees of general business providers, or employees of provider organizations who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) Direct assistance funds may not be used for:

(a) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

(b) Services or activities that are carried out in a manner that constitutes abuse;

(c) Notwithstanding abuse as defined in OAR 411-305-0020, services from persons who engage in verbal mistreatment and subject a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(d) Notwithstanding abuse as defined in OAR 411-305-0020, services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(e) Purchase of family vehicles;

(f) Purchase of service animals or costs associated with the care of service animals;

(g) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medical treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements and vitamins; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control.

(h) Ambulance services;

(i) Legal fees including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(j) Vacation costs for transportation, food, shelter, and entertainment that are not strictly required by the child's developmental disability-created need for personal assistance in all home and community settings that would normally be incurred by anyone on vacation, regardless of developmental disability;

(k) Services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(l) Employee wages or contractor payments for time or services when the child is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(m) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support or social benefit;

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(n) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(o) Services, activities, materials, or equipment that the CDDP determines may be reasonably obtained by the family 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) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Plan, refused to cooperate with record keeping required to document use of direct assistance funds, or otherwise knowingly misused public funds associated with family support services.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2130, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; Renumbered from 411-305-0130, SPD 4-2009, f. & cert. ef. 6-1-09; 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

411-305-0140

Standards for Providers Paid with Direct Assistance Funds

Independent providers, provider organizations, and general business providers paid with direct assistance funds must be qualified. At the discretion of the Division, providers who have previously been terminated or suspended by any Department division may not be authorized as providers of service. Providers must meet the following qualifications:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or guardian to provide the services listed in OAR 411-305-0120 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a criminal records check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. Any person meeting the definition of subject individual as defined in OAR 407-007-0200 to 407-007-0370 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0200 to 407-007-0370. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes;

(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, 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 Annual Plan, with such demonstration confirmed in writing by the child's parent or guardian 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 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 current Centers for Medicare and Medicaid Services list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>); and

(j) If providing transportation services, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(2) Section (1)(c) of this rule does not apply to employees of parents, employees of general business providers, or employees of provider organizations who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or its designee within 24 hours.

(4) 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, including at least one year of experience with people with developmental disabilities.

(5) 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 Services Behavior 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.

(6) Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all persons directed by the provider organization as employees, contractors, or volunteers to provide services paid for with direct assistance funds must meet the standards for qualification of independent providers described in section (1) of this rule.

(7) General business providers must hold any current license appropriate to function required by Oregon or federal law or regulation. Services purchased with direct assistance 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) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) 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 for a provider of environmental accessibility adaptations involving family home renovation or new construction;

(d) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual, and developing cost effective plans to make homes safe and accessible;

(e) Public transportation providers must be regulated according to established standards and private transportation providers must have business licenses and drivers licensed to drive in Oregon;

(f) Current retail business license for vendors and medical supply companies providing specialized equipment and supplies, including enrollment as Medicaid providers through the Division of Medical Assistance Programs if vending medical equipment;

(g) A current business license for providers of personal emergency response systems; and

(h) Retail business licenses for vendors and supply companies providing specialized diets.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: MHD 5-2003, f. & cert. ef. 7-1-03; Renumbered from 309-041-2140, SPD 20-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 4-2009, f. & cert. ef. 6-1-09; 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

411-308-0020

Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" mean activities usually performed in the course of a normal day in the child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Annual Support Plan" means the written details of the supports, activities, costs, and resources required for a child to be supported by the family in the family home. The child's Annual Support Plan articulates decisions and agreements made through a child- and family-centered process of planning and information-gathering conducted or arranged for by the child's services coordinator that involves the child (to the extent normal and appropriate for the child's age) and other persons who have been

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identified and invited to participate by the child's parent or guardian. The child's Annual Support Plan is the only plan of care required by the Division for a child receiving long-term support.

(4) "Assistant Director" means the assistant director of the Division, or that person's designee.

(5) "Child" means an individual under the age of 18 and eligible for long-term support.

(6) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under contract with the Division or a local mental health authority.

(7) "Cost Effective" means that a specific service or support meets the child's service needs and costs less than, or is comparable to, other service options considered.

(8) "CPMS" means the Client Processing Monitoring System.

(9) "Crisis" means:

(a) A situation where a child with a developmental disability is at imminent risk of placement outside the child's family home, or has already been placed outside the family home;

(b) The child requires supports due to the developmental disability to be able to safely remain in or return to the family home; and

(c) No alternative resources are available from which to obtain those supports.

(10) "Department" means the Department of Human Services (DHS).

(11) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(12) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(13) "Employer-Related Supports" mean activities that assist a family with directing and supervising provision of services described in a child's Annual Support Plan. Supports to a family assuming the role of employer 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.

(14) "Family" for determining a child's eligibility for long-term support as a resident in the family home, for identifying persons who may apply, plan, and arrange for a child's supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one child with developmental disabilities where the primary caregiver is:

(a) Related to the child by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a child in the household with developmental disabilities and the child is related to one of the partners by blood, marriage, or legal adoption.

(15) "Family Home" means a child's primary residence that is not licensed, certified by, and under contract with the Department as a foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(16) "Fiscal Intermediary" means a person or entity that receives and distributes long-term support funds on behalf of the family of an eligible child according to the child's Annual Support Plan.

(17) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination,

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.

(18) "General Business Provider" means an organization or entity selected by the parent or guardian of an eligible child, and paid with long-term support funds that:

(a) Is primarily in business to provide the service chosen by the child's parent or guardian to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the child.

(19) "Guardian" means a person or agency appointed by the courts that is authorized by the court to make decisions about services for the child.

(20) "Incident Report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving a child.

(21) "Independent Provider" means a person selected by a child's parent or guardian and paid with long-term support funds that personally provide services to the child.

(22) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(23) "Long-Term Support" means individualized planning and service coordination, arranging for services to be provided in accordance with Annual Support Plans, and purchase of supports that are not available through other resources that are required for children with developmental disabilities who are eligible for crisis diversion services to live in the family home. Long-term supports are designed to:

(a) Prevent unwanted out-of-home placement and maintain family unity; and

(b) Whenever possible, reunite families with children with developmental disabilities who have been placed out of the home.

(24) "Long-Term Support Funds" mean public funds contracted by the Department to the community developmental disability program and managed by the community developmental disability program to assist families with the purchase of supports for children with developmental disabilities according to each child's Annual Support Plan. Long-term support funds are available only to children for whom the Department designates funds to the community developmental disability program by written contracts that specify the children by name.

(25) "Mandatory Reporter" means any public or private official who comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(26) "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.

(27) "Nursing Care Plan" means a plan of care developed by a nurse that describes the medical, nursing, psychosocial, and other needs of a child and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(28) "OHP" means the Oregon Health Plan.

(29) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a positive approach that includes methods of effective evasion, deflection, and escape from holding.

(30) "Plan Year" means twelve consecutive months used to calculate what long-term support funds may be made available annually to support an eligible child.

(31) "Positive Behavioral Theory and Practice" means a proactive approach to individual 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.

(32) "Provider Organization" means an entity selected by a child's parent or guardian, and paid with long-term support funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(33) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(34) "Regional Process" means a standardized set of procedures through which a child's Annual Support Plan and funding to implement the Annual Support Plan are reviewed for approval. The review is performed by a committee of stakeholder representatives from a child's geographic service area and includes review of the potential risk of out-of-home placement, the appropriateness of the proposed supports, and cost effectiveness of the Annual Support Plan.

(35) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division, who plans, procures, coordinates, and monitors long-term support, and acts as a proponent for children with developmental disabilities and their families.

(36) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(37) "Support" means assistance eligible children and their families require, solely because of the effects of developmental disability on the child, to maintain the child in the family home.

(38) "These Rules" mean the rules in OAR chapter 411, division 308.

(39) "Volunteer" means any person providing services without pay to a child receiving long term supports.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

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

411-308-0030

Long-Term 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 long-term support funds on behalf of the 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 families who employ persons 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.

(a) CONFIDENTIALITY. The CDDP must maintain records of services to individuals 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 individual service records.

(b) DISCLOSURE. For the purpose of disclosure from individual medical records under these rules, CDDPs under these rules shall be considered "providers" as defined in ORS 179.505(1) and ORS 179.505 shall be applicable.

(A) Access to records by the Department does not require authorization by the family.

(B) For the purposes of disclosure from 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(2).

(c) INDIVIDUAL RECORDS. Records for children who receive long-term 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(3) including date of enrollment in long-term support;

(B) Records related to receipt and disbursement of long-term 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 accept-

ance or delegation of record keeping responsibilities outlined in this rule. Records must include:

(i) Itemized invoices and receipts to record 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 acceptable provision of behavior support, nursing, and other professional training and consultation services; and

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services.

(C) Incident reports, including those involving CDDP staff;

(D) Assessments used to determine required supports, preferences, and resources;

(E) Documentation of the child's eligibility for crisis services and approval of the child's Annual Support Plan through a regional process;

(F) The child's Annual Support Plan and reviews;

(G) The services coordinator's correspondence and notes related to plan development and outcomes; and

(H) Family satisfaction information.

(d) 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 long-term 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.

(e) 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 individual records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Individual records must be kept for a minimum of seven years.

(3) COMPLAINTS AND APPEALS. The CDDP must provide for review of complaints and appeals by or on behalf of children related to long-term support as set forth in OAR 411-320-0170(2)(c).

(4) 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, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 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

411-308-0090

Managing and Accessing Long-Term Support Funds

(1) Funds contracted to a CDDP by the Division to serve a specifically-named child must only be used to support that specified child. Services must be provided according to each child's approved Annual Support Plan. The funds may only be used to purchase supports described in OAR 411-308-0120. Continuing need for services must be regularly reviewed according to the Division's procedures described in these rules.

(2) No child receiving long-term support may concurrently receive services through:

(a) Children's Intensive Behavior Model Waiver;

(b) Direct assistance or immediate access funds under family support;

(c) Medically Fragile Children's Model Waiver;

(d) Medically Involved Children's Model Waiver; or

(e) Long-term support from another CDDP unless short-term concurrent services are necessary when a child moves from one CDDP to another and the concurrent supports are arranged in accordance with OAR 411-308-0060(2).

(3) Children receiving long-term support may receive short-term crisis diversion services provided through the CDDP or region. Children receiving long-term support may utilize family support information and referral services, other than direct assistance or immediate access funds, while receiving long-term support. The CDDP must clearly document the services and demonstrate that the services are arranged in a manner that does not allow duplication of funding.

Stat. Auth.: ORS 409.050, 410.070

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Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 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

411-308-0100

Conditions for Long-Term Support Purchases

(1) A CDDP must only use long-term support funds to assist families to purchase supports for the purpose defined in OAR 411-308-0010(1) and in accordance with the child's Annual Support Plan that meet requirements for development and content in OAR 411-308-0080.

(2) The CDDP must arrange for supports purchased with long-term support funds to be provided:

(a) In settings and under purchasing arrangements and conditions that allow the family to redirect long-term support funds to purchase 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 long-term 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 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) Long-term 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 long-term 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 Annual Support Plan have been satisfactorily delivered.

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030(2)(c)(B) regarding expenditure of long-term support funds. During development of the child's Annual Support 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.

(6) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.

(a) A sanction may be imposed on a provider when the CDDP determines that, at some point after the provider's initial qualification and

authorization to provide supports purchased with long-term support funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable criminal records 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 certificate, or had his or her professional license or certificate suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized long-term support services, or other similar services in a Department program;

(E) Had a founded report of child abuse or substantiated abuse;

(F) Failed to cooperate with any Department or CDDP investigation or grant access to or furnish, as requested, records or documentation;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made false statement concerning conviction of crime or substantiation of abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (4) of this rule and OAR 411-308-0130; or

(K) Been suspended or terminated as a provider by another division within the Department.

(b) The following sanctions may be imposed on a provider:

(A) The provider may no longer be paid with long-term support funds; or

(B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or the Division, as applicable.

(c) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction.

(d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider may appeal a sanction by requesting an administrative review by the Division's Assistant Director.

(B) For an appeal regarding provision of Medicaid services, written notice of the appeal must be received by the Division within 30 days of the date the sanction notice was mailed to the provider.

(e) A provider may be immediately suspended by the CDDP as a protective service action or in the case of alleged criminal activity that could pose a danger to the child. The suspension may continue until the issues are resolved.

(f) At the discretion of the Division, providers who have previously been terminated or suspended by any division within the Department may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 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

411-308-0110

Using Long-Term Support Funds for Certain Purchases is Prohibited

(1) Effective July 28, 2009, long-term support funds may not be used to support, in whole or in part, a provider in any capacity having contact with a recipient of long-term supports who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of 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.

(3) Long-term support funds may not be used for:

(a) Services that:

(A) Duplicate benefits and services otherwise available to citizens regardless of disability;

(B) Replace normal parental responsibilities for the child's care, education, recreation, and general supervision;

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to children with or without disabilities;

(D) Replace other governmental or community services available to the child or the child's family; or

(E) Exceed the actual cost of supports that must be provided for the child to be supported in the family home.

(b) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child and consumer safety agencies;

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(c) Services or activities that are carried out in a manner that constitutes abuse;

(d) Notwithstanding abuse as defined in OAR 411-308-0020, services from persons who engage in verbal mistreatment and subject a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(e) Notwithstanding abuse as defined in OAR 411-308-0020, services that restrict a child's freedom of movement by seclusion in a locked room under any condition;

(f) Purchase of family vehicles;

(g) Purchase of service animals or costs associated with the care of service animals;

(h) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements and vitamins; or

(G) Special diet or treatment supplies not related to incontinence or infection control.

(i) Ambulance services;

(j) Legal fees including but not limited to the costs of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(k) Vacation costs or any costs associated with the vacation;

(l) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(m) Employee wages or contractor payments for time or services when the child is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(n) Services, activities, materials, or equipment that are not necessary, cost effective, or do not meet the definition of support;

(o) Education and services provided by schools as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(p) Services, activities, materials, or equipment that the CDDP determines may be obtained by the family through other available means such as private or public insurance, philanthropic organizations, or other governmental or public services;

(q) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(r) Purchase of services when there is sufficient evidence to believe that the child's parent or guardian, or the service provider chosen by the child's family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the child's Annual Support Plan, refused to cooperate with record keeping required to document use of long-term support funds, or otherwise knowingly misused public funds associated with long-term support.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 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

411-308-0130

Standards for Providers Paid with Long-Term Support Funds

Independent providers, provider organizations, and general business providers paid with long-term support funds must be qualified. At the discretion of the Division, providers who have previously been terminated or suspended by any Department division may not be authorized as providers of service. Providers must meet the following qualifications:

(1) Each independent provider paid as a contractor, a self-employed person, or an employee of a child's parent or guardian to provide the services listed in OAR 411-308-0120 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a criminal records check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. Any person meeting the definition of subject individual as defined in OAR 407-007-0200 to 407-007-0370 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0200 to 407-007-0370. The

Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes;

(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 Annual Support Plan, with such demonstration confirmed in writing by the child's parent or guardian 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 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 current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(j) If transporting the child, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation.

(2) 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.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or its designee within 24 hours.

(4) 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.

(5) 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 OIS 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.

(6) Provider organizations must hold any current license or certification required by Oregon law to provide services to children. In addition, all persons directed by the provider organization as employees, contractors, or volunteers to provide services paid for with long-term support funds must meet the standards for qualification of independent providers described in section (1) of this rule.

(7) General business providers must hold any current license appropriate to function required by Oregon or federal law or regulation. Services purchased with long-term 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) A license under ORS 443.015 for a home health agency;

(b) A license under ORS 443.315 for an in-home care agency;

(c) 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 for a provider of environmental accessibility adaptations involving home renovation or new construction;

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(d) Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual, and developing cost effective plans to make homes safe and accessible;

(e) Current retail business license for vendors and medical supply companies providing specialized equipment and supplies, including enrollment as Medicaid providers through the Division of Medical Assistance Program if vending medical equipment; and

(f) A current business license for providers of personal emergency response systems.

Stat. Auth.: ORS 409.050, 410.070
Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 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

411-320-0020

Definitions

(1) "24-Hour Residential Program" means a comprehensive residential home or facility licensed by the Division under ORS 443.410 to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) Abuse of a child:

(A) As defined in ORS 419B.005; and

(B) Abuse as defined in OAR 407-045-0260, when a child resides in:

(i) Homes or facilities licensed to provide 24-hour residential services for children with developmental disabilities; or

(ii) Agencies licensed or certified by the Division to provide proctor foster care for children with developmental disabilities.

(b) Abuse of an adult as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event.

(5) "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 a standardized test administered by a psychologist, 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 developmental disabilities.

(b) "Significant impairment" in adaptive behavior means a composite score of at least two standard deviations below the norm or two or more areas of functioning that are at least two standard deviations below the norm including but not limited to communication, mobility, self-care, socialization, self-direction, functional academics, or self-sufficiency as indicated on a standardized adaptive test.

(6) "Administrative Review" means the formal process that is used by the Division when an individual or an individual's representative is not satisfied with:

(a) A developmental disability services eligibility determination; or

(b) The decision made by the community developmental disability program or support services brokerage about a complaint involving the provision of services or a service provider.

(7) "Adult" means an individual 18 years or older with developmental disabilities.

(8) "Advocate" means a person other than paid staff who has been selected by the individual, or by the individual's legal representative, 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) "Annual Plan" means:

(a) A written summary the services coordinator completes for an individual 18 years or older who is not receiving support services or comprehensive services; or

(b) The written details of the supports, activities, costs, and resources required for a child receiving family support services.

(10) "Assistant Director" means the assistant director of the Division, or that person's designee.

(11) "Care" means 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. The term "care" is synonymous with "services".

(12) "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.

(13) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role 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 verbally, through sign language, or by other communication methods.

(15) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(16) "Community Mental Health and Developmental Disability Program (CMHDDP)" means an entity that operates or contracts for all services for individuals with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems under the county financial assistance contract with the Department.

(17) "Complaint" means a verbal or written expression of dissatisfaction with services or service providers.

(18) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(19) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the Division alone or in combination with any associated employment or community inclusion program regulated by the Division:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an adult in the individual or family home costing more than the individual cost limit for support services.

(c) Comprehensive services do not include support services for adults enrolled in support services brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(20) "County of Origin" means the individual's county of residence, unless a minor, then county of origin means the county where the jurisdiction of the child's guardianship exists.

(21) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(22) "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.

(23) "Crisis Plan" means the community developmental disability program or regional crisis diversion program generated document, serving as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under these rules.

(24) "Current Documentation" means documentation relating to an individual's developmental disability in regards to the individual's functioning within the last three years. Current documentation may include but is not limited to annual plans, behavior support plans, educational records, medical assessments related to the developmental disability, psychological evaluations, and adaptive behavior assessments.

(25) "Department" means the Department of Human Services (DHS).

(26) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

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(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(27) "DHS Quality Management Strategy" means the Department's Quality Assurance Plan that includes the quality assurance strategies for the Division (http://www.oregon.gov/DHS/spd/qa/app_h_qa.pdf).

(28) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(29) "Eligibility Determination" means a decision by a community developmental disability program or by the Division regarding a person's eligibility 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.

(30) "Eligibility Specialist" means an employee of the community developmental disability program or other agency that contracts with the county or Division to determine developmental disability eligibility.

(31) "Entry" means admission to a Division-funded developmental disability service provider.

(32) "Exit" means either termination from a Division-funded developmental disability service provider or transfer from one Division-funded program to another. Exit does not mean transfer within a service provider's program within a county.

(33) "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.

(34) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(35) "Guardian" means a parent for individuals under 18 years of age, or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(36) "Health Care Provider" means a 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.

(37) "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.

(38) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing, Contested Case Hearing, and Administrative Hearing.

(39) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(40) "Imminent Risk" means:

(a) An adult who is in crisis and shall be civilly court-committed to the Department under ORS 427.215 to 427.306 within 60 days without the use of crisis diversion services; or

(b) A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.

(41) "Incident Report" means a written report of any unusual incident involving an individual.

(42) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(43) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(44) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(45) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve per-

sonal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's plan of care for Medicaid purposes.

(46) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the Individual Support Plan or requested by the individual.

(47) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(48) "Intellectual Functioning" means functioning as assessed by a qualified professional using one or more individually administered general intelligence tests.

(49) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(50) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program;

(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 community mental health and developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Division.

(51) "Majority Agreement" means for the purpose of entry, exit, transfer, and annual Individual Support Plan team meetings, that no one member of the Individual Support Plan team has the authority to make decisions for the team unless so authorized by the team process. Service providers, families, community developmental disability programs, advocacy agencies, or individuals are considered as one member of the Individual Support Plan team for the purpose of reaching majority agreement.

(52) "Management Entity" means the community developmental disability program or private corporation that operates the regional crisis diversion program, including acting as the fiscal agent for regional crisis diversion funds and resources.

(53) "Mandatory Reporter" means any public or private official who:

(a) Comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(b) While acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(54) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

(55) "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.

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(56) "Mental Retardation" means significantly sub-average general intellectual functioning defined as intelligence quotient's (IQ's) under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have mental retardation if there is also significant impairment of adaptive behavior as diagnosed and measured by a qualified professional. The adaptive behavior must be directly related to the issues of mental retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.

(a) Mild mental retardation is used to describe the degree of retardation when intelligence test scores are 50 to 69. Individuals with IQ's in the 70 to 75 range may be considered as having mental retardation if there is significant impairment in adaptive behavior.

(b) Moderate mental retardation is used to describe the degree of retardation when intelligence test scores are 35 to 49.

(c) Severe mental retardation is used to describe the degree of retardation when intelligence test scores are 20 to 34.

(d) Profound mental retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(57) "Monitoring" means the periodic review of the implementation of services identified in the Individual Support Plan or annual summary, and the quality of services delivered by other organizations.

(58) "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.

(59) "OIT" means the Department of Human Services, Office of Investigations and Training.

(60) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(61) "Physical Restraint" means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.

(62) "Physician" means a person licensed under ORS chapter 677 to practice medicine and surgery.

(63) "Physician Assistant" means a person licensed under ORS 677.505 to 677.525.

(64) "Plan of Care" means a written document developed for each individual by the support team using a person-centered approach that describes the supports, services, and resources provided or accessed to address the needs of the individual.

(65) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(66) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(67) "Psychologist" means:

(a) A person possessing a doctorate degree in psychology from an accredited program with course work in human growth and development, tests, and measurement; or

(b) A state certified school psychologist.

(68) "Psychotropic Medication" means 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.

(69) "Qualified Professional" means a:

(a) Licensed clinical psychologist (Ph.D., Psy.D.) or school psychologist;

(b) Medical doctor (MD); or

(c) Doctor of osteopathy (DO).

(70) "Region" means a group of Oregon counties defined by the Division that have a designated management entity to coordinate regional crisis and backup services and be the recipient and administration of funds for those services.

(71) "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 shall be delivered more effectively or automatically on a regional basis.

(72) "Respite" means short-term care and supervision provided to an individual on a periodic or intermittent basis because of the temporary absence of, or need for relief of, the primary care giver.

(73) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(74) "Review" means a request for reconsideration of a decision made by a service provider, community developmental disability program, support services brokerage, or the Division.

(75) "Service Element" means a funding stream to fund program or services including but not limited to foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive services, or family support.

(76) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Division, or other appropriate agency, to provide these services. The term "provider" or "program" is synonymous with "service provider."

(77) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities. The term "case manager" is synonymous with "services coordinator".

(78) "State Training Center" means the Eastern Oregon Training Center.

(79) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(80) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(81) "Support Services Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with developmental disabilities.

(82) "Support Team" means a group, composed of members as determined by an individual receiving services or the individual's legal guardian, that participates in the development of the individual's plan of care.

(83) "These Rules" mean the rules in OAR chapter 411, division 320.

(84) "Transfer" means movement of an individual from a service site to another service site within a county, administered by the same service provider that has not been addressed within the Individual Support Plan.

(85) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan is developed and approved by the Individual Support Plan team. The transition plan 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 the Individual Support Plan development.

(86) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

(87) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Division, upon written application by the community developmental disability program.

(88) "Volunteer" means any person providing services without pay to individuals receiving case management services.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 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;

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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

411-320-0030

Organization and Program Management

(1) ORGANIZATION AND INTERNAL MANAGEMENT. Each service provider of community developmental disability services funded by the Division must have written standards governing the operation and management of the program. Such standards must be up to date, available upon request, and include:

(a) An up-to-date organization chart showing lines of authority and responsibility from the LMHA to the CDDP manager and the components and staff within the agency;

(b) Position descriptions for all staff providing community developmental disability services;

(c) Personnel policies and procedures concerning:

(A) Recruitment and termination of employees;

(B) Employee compensation and benefits;

(C) Employee performance appraisals, promotions, and merit pay;

(D) Staff development and training;

(E) Employee conduct (including the requirement that abuse of an individual by an employee, staff, or volunteer of the CDDP is prohibited and is not condoned or tolerated); and

(F) Reporting of abuse (including the requirement that any employee of the CDDP is to report incidents of abuse when the employee comes in contact with and has reasonable cause to believe that an individual has suffered abuse). Notification of mandatory reporting status must be made at least annually to all employees and documented on forms provided by the Division.

(2) MANAGEMENT PLAN. The CDDP must maintain a current plan assigning responsibility for the developmental disabilities program management functions and duties described in this rule. The management plan must assure that the functions and duties are assigned to people who have the knowledge and experience necessary to perform them, as well as ensuring that these functions shall be implemented.

(3) PROGRAM MANAGEMENT. Staff delivering developmental disability services must be organized under the leadership of a designated CDDP manager and receive clerical support services sufficient to perform their required duties.

(a) The LMHA, public entity, or the public or private corporation operating the CDDP must designate a full-time employee who must, on at least a part-time basis, be responsible for management of developmental disability services within a specific geographic service area.

(b) In addition to other duties as may be assigned in the area of developmental disability services, the CDDP must at a minimum develop and assure:

(A) Implementation of plans as may be needed to provide a coordinated and efficient use of resources available to serve individuals;

(B) Maintenance of positive and cooperative working relationships with families, advocates, service providers, support service brokerages, the Division, local government, and other state and local agencies with an interest in developmental disability services;

(C) Implementation of programs funded by the Division to encourage pursuit of defined program outcomes and monitor the programs to assure service delivery that is in compliance with related contracts and applicable local, state, and federal requirements;

(D) Collection and timely reporting of information as may be needed to conduct business with the Division including but not limited to information needed to license foster homes, collect federal funds supporting services, and investigate complaints related to services or suspected abuse; and

(E) Use of procedures that attempt to resolve complaints involving individuals or organizations that are associated with developmental disability services.

(4) QUALIFIED STAFF. Only qualified staff shall provide developmental disability services.

(a) Each CDDP must provide a qualified CDDP manager, services coordinator, eligibility specialist, quality assurance coordinator, and abuse investigator specialist for adults with developmental disabilities, or have an agreement with another CDDP to provide a qualified eligibility specialist, quality assurance coordinator, and abuse investigator specialist for adults with developmental disabilities.

(A) CDDP MANAGER.

(i) The CDDP manager must have knowledge of the public service system for developmental disability services in Oregon and at least:

(I) A bachelor's degree in behavioral, social, health science, special education, public administration, or human service administration AND a

minimum of four years experience, with at least two of those years of experience in developmental disability services that provided recent experience in program management, fiscal management, and staff supervision; or

(II) Six years of experience in supervision or six years of experience in staff technical or professional level work related to developmental disability services.

(ii) On an exceptional basis, the CDDP may hire a person who does not meet the qualifications in section (4)(a)(A)(i) of this rule if the county and the Division have mutually agreed on a training and technical assistance plan that assures that the person shall quickly acquire all needed skills and experience.

(iii) When the position of CDDP manager becomes vacant, an interim CDDP manager must be appointed to serve until a permanent CDDP manager is appointed. The CDDP must request a variance as described in section (5) of this rule if the person appointed as interim CDDP manager does not meet the qualifications in section (4)(a)(A)(i) of this rule and the term of the appointment totals more than 180 days.

(B) CDDP SUPERVISOR. The CDDP supervisor (when available) must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree or equivalent course work in a field related to management such as business or public administration, or a field related to developmental disability services, may be substituted for up to three years required experience; or

(ii) Five years of experience in supervision or five years of experience in staff technical or professional level work related to developmental disability services.

(C) SERVICES COORDINATOR. The services coordinator must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in behavioral science, social science, or a closely related field; or

(ii) A bachelor's degree in any field AND one year of human services related experience; or

(iii) An associate's degree in a behavioral science, social science, or a closely related field AND two years human services related experience; or

(iv) Three years of human services related experience.

(D) ELIGIBILITY SPECIALIST. The eligibility specialist must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in behavioral science, social science, or a closely related field; or

(ii) A bachelor's degree in any field AND one year of human services related experience; or

(iii) An associate's degree in a behavioral science, social science, or a closely related field AND two years human services related experience; or

(iv) Three years of human services related experience.

(E) QUALITY ASSURANCE COORDINATOR. The quality assurance coordinator must have knowledge of the public service system for developmental disability services in Oregon and at least:

(i) A bachelor's degree in business or public administration, behavioral or social sciences, finance, political science, or any degree demonstrating the capacity for the knowledge and skills AND two years professional level evaluative, analytical, and planning work; or

(ii) Any combination of experience and education equivalent to five years of experience that typically supports the knowledge and skills for the classification.

(F) ABUSE INVESTIGATOR SPECIALIST. The abuse investigator specialist must have at least:

(i) A bachelor's degree in human, social, behavioral, or criminal science AND two years human services, law enforcement, or investigative experience; or

(ii) An associate's degree in the human, social, behavioral, or criminal science AND four years human services, law enforcement, or investigative experience.

(b) An application for employment at the CDDP must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(c) Any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0200 to 407-007-0370 including staff who are not identified in this rule but use public funds intended for the operation of the CDDP, and who has or will have contact with an eligible individual of the CDDP, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

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(A) Effective July 28, 2009, the CDDP may not use public funds to support, in whole or in part, any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who will have contact with a recipient of CDDP services and who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(B) Effective July 28, 2009, a person does not meet the qualifications as described in this rule if the person has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(C) Any employee, volunteer, advisor of the CDDP, or any subject individual defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or its designee within 24 hours.

(d) Sections (4)(c)(A) and (B) of this rule do not apply to employees who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(5) VARIANCE. The CDDP must submit a written variance request to the Division prior to employment of a person not meeting the minimum qualifications in section (4)(a) of this rule. A variance request may not be requested for sections (4)(b) and (c) of this rule. The written variance request must include:

(a) An acceptable rationale for the need to employ a person who does not meet the minimum qualifications in section (4)(a) of this rule; and

(b) A proposed alternative plan for education and training to correct the deficiencies.

(A) The proposal must specify activities, timelines, and responsibility for costs incurred in completing the alternative plan.

(B) 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) STAFF DUTIES.

(a) SERVICES COORDINATOR DUTIES. The duties of the services coordinator must be specified in the employee's job description and at a minimum include:

(A) The delivery of case management services to individuals as listed in OAR 411-320-0090(4);

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(b) ELIGIBILITY SPECIALIST DUTIES. The duties of the eligibility specialist must be specified in the employee's job description and at a minimum include:

(A) Completing intake and eligibility determination for persons applying for developmental disability services;

(B) Completing eligibility redetermination for individuals requesting continuing developmental disability services; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(c) QUALITY ASSURANCE COORDINATOR DUTIES. The duties of the quality assurance coordinator must be specified in the employee's job description and at a minimum include:

(A) Assisting the CDDP manager in the coordination of the CDDP's quality assurance system;

(B) Developing and coordinating the CDDP's annual quality assurance plan;

(C) Assisting the CDDP manager in monitoring the performance of the CDDP;

(D) Performing quality assurance coordinator responsibilities as described in OAR 411-320-0045;

(E) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(F) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(d) ABUSE INVESTIGATOR SPECIALIST DUTIES. The duties of the abuse investigator specialist must be specified in the employee's job description and at a minimum include:

(A) Conducting abuse investigation and protective services for adult individuals with developmental disabilities enrolled in, or previously eligible and voluntarily terminated, developmental disability services;

(B) Assisting the CDDP manager in monitoring the quality of services delivered within the county; and

(C) Assisting the CDDP manager in the identification of existing and insufficient service delivery resources or options.

(7) STAFF TRAINING. Qualified staff of the CDDP must maintain and enhance their knowledge and skills through participation in education and training. The Department provides training materials and the provision of training may be conducted by the Division or CDDP staff, depending on available resources.

(a) CDDP MANAGER TRAINING. The CDDP manager must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP manager.

(A) The orientation provided by the CDDP to a new CDDP manager must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Division's rules governing the CDDP;

(iii) An overview of the Division's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into the Division's payment and reporting systems;

(v) A review and orientation of Medicaid, Supplemental Security Income (SSI), Social Security Administration (SS), home and community-based waiver services, the Oregon Health Plan (OHP), and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP manager's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The CDDP manager must attend the following trainings endorsed or sponsored by the Division within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP manager must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

(i) Each CDDP manager must participate in a minimum of 20 hours per year of additional Division-sponsored or other training in the area of developmental disabilities.

(ii) Each CDDP manager must attend trainings to maintain a working knowledge of system changes in the area the CDDP manager is managing or supervising.

(b) CDDP SUPERVISOR TRAINING. The CDDP supervisor (when designated) must participate in a basic training sequence and be knowledgeable of the duties of the staff they supervise and of the developmental disability services they manage. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new CDDP supervisor.

(A) The orientation provided by the CDDP to a new CDDP supervisor must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Division's rules governing the CDDP;

(iii) An overview of the Division's licensing and certification rules for service providers;

(iv) An overview of the enrollment process and required documents needed for enrollment into the Division's payment and reporting systems;

(v) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes; and

(vi) A review (prior to having contact with individuals) of the CDDP supervisor's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The CDDP supervisor must attend the following trainings endorsed or sponsored by the Division within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The CDDP supervisor must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities of the staff they supervise.

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(i) Each CDDP supervisor must participate in a minimum of 20 hours per year of additional Division-sponsored or other training in the area of developmental disabilities.

(ii) Each CDDP supervisor must attend trainings to maintain a working knowledge of system changes in the area the CDDP supervisor is managing or supervising.

(c) **SERVICES COORDINATOR TRAINING.** The services coordinator must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new services coordinator.

(A) The orientation provided by the CDDP to a new services coordinator must include:

(i) An overview of the role and responsibilities of a services coordinator;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of the Division's rules governing the CDDP;

(iv) An overview of the Division's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into the Division's payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes for the services they coordinate; and

(vii) A review (prior to having contact with individuals) of the services coordinator's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The services coordinator must attend the following trainings endorsed or sponsored by the Division within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training (for services coordinators providing services to individuals in comprehensive services).

(C) The services coordinator must continue to enhance his or her knowledge, as well as maintain a basic understanding of developmental disability services and the skills, knowledge, and responsibilities necessary to perform the position. Each services coordinator must participate in a minimum of 20 hours per year of Division-sponsored or other training in the area of developmental disabilities.

(d) **ELIGIBILITY SPECIALIST TRAINING.** The eligibility specialist must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new eligibility specialist.

(A) The orientation provided by the CDDP to a new eligibility specialist must include:

(i) An overview of eligibility criteria and the intake process;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of the Division's rules governing the CDDP;

(iv) An overview of the Division's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into the Division's payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, and OHP; and

(vii) A review (prior to having contact with individuals) of the eligibility specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The eligibility specialist must attend and complete eligibility core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of eligibility core competency training, or if competency is not demonstrated, the eligibility specialist must consult with another trained eligibility specialist or consult with a Division diagnosis and evaluation coordinator when making eligibility determinations.

(C) The eligibility specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position.

(i) Each eligibility specialist must participate in Division-sponsored trainings for eligibility on an annual basis.

(ii) Each eligibility specialist must participate in a minimum of 20 hours per year of Division-sponsored or other training in the area of developmental disabilities.

(e) **QUALITY ASSURANCE COORDINATOR TRAINING.** The quality assurance coordinator must participate in a basic training sequence. The basic training sequence is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new quality assurance coordinator.

(A) The orientation provided by the CDDP to a new quality assurance coordinator must include:

(i) An overview of the Centers for Medicare and Medicaid Services six quality assurances and the Department's Quality Assurance Plan;

(ii) An overview of developmental disability services and related human services within the county;

(iii) An overview of the Division's rules governing the CDDP;

(iv) An overview of the Division's licensing and certification rules for service providers;

(v) An overview of the enrollment process and required documents needed for enrollment into the Division's payment and reporting systems;

(vi) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning process; and

(vii) A review (prior to having contact with individuals) of the quality assurance coordinator's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The quality assurance coordinator must attend the following trainings endorsed or sponsored by the Division within the first year of entering into the position:

(i) Case management basics; and

(ii) ISP training.

(C) The quality assurance coordinator must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position.

(i) Each quality assurance coordinator must participate in a minimum of 20 hours per year of Division-sponsored or other training in the area of developmental disabilities.

(ii) Each quality assurance coordinator must participate in regularly scheduled Division-sponsored meetings relevant to specific job responsibilities.

(f) **ABUSE INVESTIGATOR SPECIALIST TRAINING.** The abuse investigator specialist must participate in core competency training. Training materials shall be provided by the OIT. The core competency training is not a substitute for the normal procedural orientation that must be provided by the CDDP to the new abuse investigator specialist.

(A) The orientation provided by the CDDP to a new abuse investigator specialist must include:

(i) An overview of developmental disability services and related human services within the county;

(ii) An overview of the Division's rules governing the CDDP;

(iii) An overview of the Division's licensing and certification rules for service providers;

(iv) A review and orientation of Medicaid, SSI, SS, home and community-based waiver services, OHP, and the individual support planning processes; and

(v) A review (prior to having contact with individuals) of the abuse investigator specialist's responsibility as a mandatory reporter of abuse, including abuse of individuals with developmental disabilities, mental illness, seniors, and children.

(B) The abuse investigator specialist must attend and pass core competency training within the first year of entering into the position and demonstrate competency after completion of core competency training. Until completion of core competency training, or if competency is not demonstrated, the abuse investigator specialist must consult with OIT prior to completing the abuse investigation and protective services report.

(C) The abuse investigator specialist must continue to enhance his or her knowledge, as well as maintain a basic understanding of the skills, knowledge, and responsibilities necessary to perform the position. Each abuse investigator specialist must participate in quarterly meetings held by OIT. At a minimum, one meeting per year must be attended in person.

(g) **ATTENDANCE.** The CDDP manager must assure the attendance of the CDDP supervisor, services coordinator, eligibility specialist, abuse investigator specialist, or quality assurance coordinator at Division-mandated training.

(h) **DOCUMENTATION.** The CDDP must keep documentation of required training in the personnel files of the individual employees including the CDDP manager, CDDP supervisor, services coordinator, eligibility

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specialist, abuse investigator specialist, quality assurance coordinator, and other employees providing services to individuals.

(8) **ADVISORY COMMITTEE.** Each CDDP must have an advisory committee.

(a) The advisory committee must meet at least quarterly.

(b) The membership of the advisory committee must be broadly representative of the community, with a balance of age, sex, ethnic, socioeconomic, geographic, professional, and consumer interests represented. Membership must include advocates for individuals as well as individuals and their families.

(c) The advisory committee must advise the LMHA, the CMHDDP director, and the CDDP manager on community needs and priorities for services, and must assist in planning and in review and evaluation of services.

(d) When the Division or a private corporation is operating the CDDP, the advisory committee must advise the CDDP director and the CDDP manager on community needs and priorities for services, and must assist in planning and in review and evaluation of services.

(e) The advisory committee may function as the disability issues advisory committee as described in ORS 430.625 if so designated by the LMHA.

(f) The advisory committee may function as the CDDP's quality assurance committee.

(9) **NEEDS ASSESSMENT, PLANNING, AND COORDINATION.** Upon the Division's request, the CDDP must assess local needs for services to individuals and must submit planning and assessment information to the Division.

(10) **CONTRACTS.**

(a) If the CDDP, or any of the CDDPs services as described in the Department's contract with the LMHA, is not operated by the LMHA, there must be a contract between the LMHA and the organization operating the CDDP or the services, or a contract between the Division and the operating CDDP. The contract must specify the authorities and responsibilities of each party and conform to the requirements of the Department's rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(b) The CDDP may purchase certain services for an individual from a qualified service provider without first providing an opportunity for competition among other service providers if the service provider is selected by the individual, the individual's family, or the individual's guardian or legal representative.

(A) The service provider selected must also meet Division certification or licensing requirements to provide the type of service to be contracted.

(B) There must be a contract between the service provider and the CDDP that specifies the authorities and responsibilities of each party and conforms to the requirements of the Department's rules pertaining to contracts or any contract requirement with regard to operation and delivery of services.

(c) When a CDDP contracts with a public agency or private corporation for delivery of developmental disability services, the CDDP must include in the contract only terms that are substantially similar to model contract terms established by the Department. The CDDP may not add contractual requirements, including qualifications for contractor selection that are nonessential to the services being provided under the contract. The CDDP must specify in contracts with service providers that disputes arising from these limitations must be resolved according to the complaint procedures contained in OAR 411-320-0170. For purposes of this rule, the following definitions apply:

(A) "Model contract terms established by the Department" means all applicable material terms and conditions of the omnibus contract, as modified to appropriately reflect a contractual relationship between the service provider and CDDP and any other requirements approved by the Division as local options under procedures established in these rules.

(B) "Substantially similar to model contract terms" means that the terms developed by the CDDP and the model contract terms require the service provider to engage in approximately the same type activity and expend approximately the same resources to achieve compliance.

(C) "Nonessential to the services being provided" means requirements that are not substantially similar to model contract terms developed by the Department.

(d) The CDDP may, as a local option, impose on a public agency or private corporation delivering developmental disability services under a contract with the CDDP, a requirement that is in addition to or different

from requirements specified in the omnibus contract if all of the following conditions are met:

(A) The CDDP has provided the affected contractors with the text of the proposed local option as it would appear in the contract. The proposed local option must include:

(i) The date upon which the local option would become effective and a complete written description of how the local option would improve individual independence, productivity, or integration; or

(ii) How the local option would improve the protection of individual health, safety, or rights;

(B) The CDDP has sought input from the affected contractors concerning ways the proposed local option impacts individual services;

(C) The CDDP, with assistance from the affected contractors, has assessed the impact on the operations and financial status of the contractors if the local option is imposed;

(D) The CDDP has sent a written request for approval of the proposed local option to the Division's Assistant Director that includes:

(i) A copy of the information provided to the affected contractors;

(ii) A copy of any written comments and a complete summary of oral comments received from the affected contractors concerning the impact of the proposed local option; and

(iii) The text of the proposed local option as it would appear in contracts with service providers, including the proposed date upon which the requirement would become effective.

(E) The Division has notified the CDDP that the new requirement is approved as a local option for that program; and

(F) The CDDP has advised the affected contractors of their right and afforded them an opportunity to request mediation as provided in these rules before the local option is imposed.

(e) The CDDP may add contract requirements that the CDDP considers necessary to ensure the siting and maintenance of residential facilities in which individual services are provided. These requirements must be consistent with all applicable state and federal laws and regulations related to housing.

(f) The CDDP must adopt a dispute resolution policy that pertains to disputes arising from contracts with service providers funded by the Division and contracted through the CDDP. Procedures implementing the dispute resolution policy must be included in the contract with any such service provider.

(11) **FINANCIAL MANAGEMENT.**

(a) There must be up-to-date accounting records for each developmental disability service accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities. The accounting records must be consistent with generally accepted accounting principles and conform to the requirements of OAR 309-013-0120 to 309-013-0220.

(b) There must be written statements of policy and procedure as are necessary and useful to assure compliance with any Department administrative rules pertaining to fraud and embezzlement and financial abuse or exploitation of individuals.

(c) Billing for Title XIX funds must in no case exceed customary charges to private pay individuals for any like item or service.

(12) **POLICIES AND PROCEDURES.** There must be such other written and implemented statements of policy and procedure as necessary and useful to enable the CDDP to accomplish its service objectives and to meet the requirements of the contract with the Department, these rules, and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 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 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

411-320-0140

Abuse Investigations and Protective Services

(1) **GENERAL DUTIES OF THE CDDP.** For the purpose of conducting abuse investigations and provision of protective services for adults, the CDDP is the designee of the Department. Each CDDP must conduct abuse investigations and provide protective services or arrange for the conduct of abuse investigations and the provision of protective services through cooperation and coordination with other CDDPs and when applicable, support services brokerages. Investigations must be done in accordance with OAR 407-045-0290. If determined necessary or appropriate, the Department may conduct an investigation itself rather than allow the CDDP to investigate the alleged abuse or the Department may conduct an investi-

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gation in addition to the investigation by the CDDP. Under such circumstances, the CDDP must receive authorization from the Department before conducting any separate investigation.

(2) **ELIGIBILITY FOR PROTECTIVE SERVICES.** Unless otherwise directed by the Department, the CDDP must investigate allegations of abuse of individuals who are developmentally disabled and are:

- (a) Eighteen years of age or older; and
- (b) Receiving case management services; or
- (c) Receiving any Division-funded services for individuals; or
- (d) Adults previously determined eligible for developmental disability services and voluntarily terminated from services in accordance with OAR 411-320-0100(3) and (4).

(3) **ABUSE INVESTIGATIONS.** The CDDP must have and implement written protocols that describe the conduct of an investigation, a risk assessment, implementation of any actions, and the report writing process. Investigations must be conducted in accordance with OAR 407-045-0250 to 407-045-0360.

(4) **COORDINATION WITH OTHER AGENCIES.** The CDDP must cooperate and coordinate investigations and protective services with other agencies that have authority to investigate allegations of abuse for adults or children.

(5) **INITIAL COMPLAINTS.** Initial complaints must immediately be submitted electronically, using the Division's system for reporting serious events.

(6) **CONFLICT OF INTEREST.** The CDDP shall not investigate allegations of abuse made against employees of the CDDP. Investigations of CDDP staff shall be conducted by the Department or other CDDP not subject to an actual or potential conflict of interest.

(7) **NOTIFICATION.** Upon the initiation and completion of an investigation of an alleged abuse, the CDDP must comply with the notification requirements as described in OAR 407-045-0290 and OAR 407-045-0320.

(8) **REPORTS.** The CDDP must complete an abuse investigation and protective service report according to OAR 407-045-0320. A copy of the final abuse investigation and protective services report must be provided to the Department within five working days of the report's completion and approval by OIT. Abuse investigation and protective service reports must be maintained by the CDDP in accordance with OAR 407-045-0320.

(9) **DISCLOSURE.** The CDDP shall disclose an abuse investigation and protective services report and related documents as described in OAR 407-045-0330.

Stat. Auth.: ORS 409.050, 410.070, 430.640
Stats. Implemented: ORS 427.005, 427.007, 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

411-325-0020

Definitions

(1) "24-Hour Residential Program" means a comprehensive residential home or facility licensed by the Division under ORS 443.410 to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) Abuse of a child as defined in ORS 419B.005, and for the purposes of these rules, abuse of a child also means abuse as defined in OAR 407-045-0260.

(b) Abuse of an adult as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means 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 OAR 407-045-0310.

(4) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(5) "Adult" means an individual 18 years or older with developmental disabilities.

(6) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative 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.

(7) "Aid 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.

(8) "Appeal" means the process under ORS chapter 183 that the licensed service provider may use to petition the suspension, denial, or revocation of their license or application.

(9) "Applicant" means a person, agency, corporation, or governmental unit, who applies for a license to operate a residential home or facility providing 24-hour comprehensive services to individuals with developmental disabilities.

(10) "Assessment" means an evaluation of an individual's needs.

(11) "Assistant Director" means the assistant director of the Division, or that person's designee.

(12) "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. This baseline measure serves as the reference point by which the ongoing efficacy of the Individual Support Plan is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of the Individual Support Plan team meeting.

(13) "Behavior Data Collection System" means the methodology specified within the individual's Behavior Support Plan that directs the process for recording observation, intervention, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(14) "Behavior Data Summary" means a document composed by the service provider to summarize episodes of physical intervention. The behavior data summary serves as a substitution for the requirement of individual incident reports for each episode of physical intervention.

(15) "Board of Directors" means a group of persons formed to set policy and give directions to a program designed to provide residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(16) "Care" means 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. Care also includes being aware of the individual's general whereabouts at all times and monitoring the activities of the individual while on the premises of the residence to ensure the individual's health, safety, and welfare. The term "care" is synonymous with "services".

(17) "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.

(18) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(19) "Choice" means the individual's expression of preference, opportunity for, and active role 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 verbally, through sign language, or by other communication methods.

(20) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(21) "Competency Based Training Plan" means a written description of a service provider's process 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 provider's mission; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented including steps for remediation, and when a competency may be waived by a provider to accommodate a staff person's specific circumstances.

(22) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(23) "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.

(24) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(25) "Denial" means the refusal of the Division to issue a license to operate a 24-hour residential home or facility for children or adults because the Division has determined that the home or facility is not in compliance with one or more of these rules.

(26) "Department" means the Department of Human Services (DHS).

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(27) “Developmental Disability” means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(28) “Direct Nursing Service” means the provision of individual-specific advice, plans, or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home or facility. 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.

(29) “Division” means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(30) “Domestic Animals” mean any various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(31) “Educational Surrogate” means a person who acts in place of a parent in safeguarding a child’s rights in the special education decision-making process:

(a) When the parent 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 a parent or adult student.

(32) “Entry” means admission to a Division-funded developmental disability service provider. For purposes of these rules, “entry” means admission to a licensed 24-hour home or facility.

(33) “Executive Director” means the person designated by a board of directors or corporate owner that is responsible for the administration of the program’s services for individuals.

(34) “Exit” means either termination from a Division-funded developmental disability service provider or transfer from one Division-funded program to another. Exit does not mean transfer within a service provider’s program within a county.

(35) “Founded Reports” means the Department’s Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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) “Guardian” means a parent for individuals under 18 years of age or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(37) “Health Care Provider” means a 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.

(38) “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.

(39) “Incident Report” means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

(40) “Independence” means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(41) “Individual” means an adult or a child with developmental disabilities for whom services are planned and provided.

(42) “Individualized Education Plan (IEP)” means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(43) “Individual Support Plan (ISP)” means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered

process of planning and information gathering. The Individual Support Plan is the individual’s Plan of Care for Medicaid purposes.

(44) “Individual Support Plan (ISP) Team” means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the Individual Support Plan.

(45) “Integration” means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(46) “Legal Representative” means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the individual or a person or agency authorized by the court to make decisions about services for the individual.

(47) “Licensee” means a person or organization to whom a license is granted.

(48) “Majority Agreement” means for purposes of entry, exit, transfer, and annual Individual Support Plan team meetings, that no one member of the Individual Support Plan team has the authority to make decisions for the team unless so authorized by the team process. Service providers, families, community developmental disability programs, advocacy agencies, or individuals are considered as one member of the Individual Support Plan team for the purpose of reaching majority agreement.

(49) “Mandatory Reporter” means any public or private official who:

(a) For the purposes of these rules, is a staff or volunteer working with individuals birth to 17 years of age, and comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter’s official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(b) For the purposes of these rules, is a staff or volunteer working with adults eighteen years and older, and while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(50) “Mechanical Restraint” means any mechanical device, material, object, or equipment that is attached or adjacent to an individual’s body that the individual cannot easily remove or easily negotiate around, and that restricts freedom of movement or access to the individual’s body.

(51) “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.

(52) “Modified Diet” means the texture or consistency of food or drink is altered or limited. Examples include but are not limited to no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(53) “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.

(54) “Nursing Care Plan” means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught or delegated to the provider and staff.

(55) “Oregon Core Competencies” means:

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(a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

(b) The associated timelines in which newly hired staff must demonstrate competencies.

(56) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(57) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(58) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(59) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(60) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(61) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(62) "Psychotropic Medication" means 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.

(63) "Respite" means intermittent services provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(64) "Revocation" means the action taken by the Division to rescind a 24-hour home or facility license after the Division has determined that the 24-hour residential program is not in compliance with one or more of these rules.

(65) "Self-Administration of Medication" means the 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.

(66) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Division, or other appropriate agency, to provide these services. For the purpose of these rules, "provider", "program", "applicant", or "licensee" is synonymous with "service provider."

(67) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(68) "Significant Other" means a person selected by the individual to be the individual's friend.

(69) "Specialized Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include but are not limited to low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A specialized diet does not include a diet where extra or additional food is offered without physician's orders but may not be eaten, for example, offer prunes each morning at breakfast or include fresh fruit with each meal.

(70) "Staff" means a paid employee responsible for providing services to individuals and whose wages are paid in part or in full with funds subcontracted with the community developmental disability program or contracted directly through the Division.

(71) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(72) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(73) "Suspension of License" means an immediate temporary withdrawal of the approval to operate a 24-hour home or facility after the Division determines that the 24-hour home or facility is not in compliance with one or more of these rules.

(74) "These Rules" mean the rules in OAR chapter 411, division 325.

(75) "Transfer" means movement of an individual from one home or facility to another home or facility within the same county, administered by the same service provider.

(76) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan is developed and approved by the Individual Support Plan team. The Transition Plan 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 the Individual Support Plan development.

(77) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(78) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Division upon written application by the provider.

(79) "Volunteer" means any person assisting in a 24-hour home or facility without pay to support the care provided to individuals residing in the home or facility.

Stat. Auth.: ORS 410.070 & 409.050

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

411-325-0100

Inspections and Investigations

(1) All services covered by these rules must allow the following types of investigations and inspections:

(a) Quality assurance, license renewal, and onsite inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) The Department, the Department's designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

(a) Open to inspection and investigation by the Department, the Department's designee, or proper authority; and

(b) Submitted to or be made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or the Department's designee has determined to initiate an investigation, the provider may not conduct an internal investigation. For the purposes of this section, an internal investigation is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) When an abuse investigation has been initiated, the Department or the Department's designee shall provide notification in accordance with OAR chapter 407, division 045.

(7) The Department or the Department's designee shall conduct investigations as described in OAR chapter 407, division 045.

(8) When an abuse investigation has been completed, the Department or the Department's designee shall provide notice of the Abuse

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Investigation and Protective Services Report according to OAR chapter 407, division 045.

(9) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the provider may conduct an investigation to determine if any personnel actions are necessary.

(10) Upon completion of the Abuse Investigation and Protective Service Report, according to OAR chapter 407, division 045 the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate provider. The provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(11) A plan of correction must be submitted to the CDDP and the Division for any noncompliance found during an inspection under this rule.
Stat. Auth.: ORS 410.070 & 409.050
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

411-325-0160

Program Management and Personnel Practices

(1) **NON-DISCRIMINATION.** The program must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment practices.

(2) **BASIC PERSONNEL POLICIES AND PROCEDURES.** The program 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 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 program or service provider may not retaliate against any staff that reports in good faith suspected abuse or retaliate against the child or adult with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any community facility, community program or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be 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 subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the child or adult because of the report and includes but is not limited to:

- (A) Discharge or transfer from the program, except for clinical reasons;
- (B) Discharge from or termination of employment;
- (C) Demotion or reduction in remuneration for services; or
- (D) Restriction or prohibition of access to the program or the individuals served by the program.

(4) **COMPETENCY BASED TRAINING PLAN.** The program must have and implement a Competency Based Training Plan that meets, at a minimum, the competencies and timelines set forth in the Division's Oregon Core Competencies.

(5) **MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.** Any employee of a program is a mandatory reporter. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees shall be provided with a Department produced card regarding abuse reporting status and abuse reporting. For reporting purposes the following shall apply:

(a) Programs providing services to adults must report to the CDDP where the adult resides and if there is reason to believe a crime has been committed a report must also be made to law enforcement.

(b) Programs providing services to children must report to the Department or law enforcement in the county where the child resides.

(6) **APPLICATION FOR EMPLOYMENT.** An application for employment at the program must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(7) **CRIMINAL RECORDS CHECKS.** Any employee, volunteer, respite provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will have contact with a resident of the program, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) Effective July 28, 2009, the program may not use public funds to support, in whole or in part, a person as described in section (7) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Section (7)(a) of this rule does not apply to employees of the service provider who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) Any staff, volunteer, respite provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or its designee within 24 hours.

(8) **DIRECTOR QUALIFICATIONS.** The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in 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.

(9) **GENERAL STAFF QUALIFICATIONS.** Any employee providing direct assistance 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 procedures for review of criminal records in OAR 407-007-0200 to 407-007-0370 and section (7) 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 literate and capable of understanding written and oral orders;
- (e) Be able to communicate with individuals, physicians, services coordinators, and appropriate others;
- (f) Be able to respond to emergency situations at all times;
- (g) Have clear job responsibilities as described in a current signed and dated job description;
- (h) Have knowledge of individuals' ISP's and all medical, behavioral, and additional supports required for the individuals; and
- (i) Have met the basic qualifications in the program's Competency Based Training Plan.

(10) **PERSONNEL FILES AND QUALIFICATIONS RECORDS.** The program must maintain up-to-date written job descriptions for all employees as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each employee:

- (a) Written documentation that references and qualifications were checked;
- (b) Written documentation of an approved criminal records check by the Department;
- (c) Written documentation of employees' notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;
- (d) Written documentation of any founded report of child abuse or substantiated abuse;
- (e) Written documentation kept current that the staff person has demonstrated competency in areas identified by the provider's Competency Based Training Plan as required by section (4) of this rule, and that is appropriate to their job description; and
- (f) Written documentation of 12 hours job-related in-service training annually including documentation of training in CPR and first aid certification.

(11) **PROGRAM DOCUMENTATION REQUIREMENTS.** All entries required by these rules 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.

(12) **DISSOLUTION OF PROGRAM.** Prior to the dissolution of a program, a representative of the governing body or owner of the program must notify the Division 30 days in advance in writing and make appropriate arrangements for the transfer of individual's records.

Stat. Auth.: ORS 410.070 & 409.050
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 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

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411-325-0190

Safety: Incident Reports and Emergency Notifications

(1) **INCIDENT REPORTS.** A written report that describes any incident as defined in OAR 411-325-0020 involving an individual must be placed in the individual's record. Such description 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 to include the follow-up to be taken to prevent a recurrence of the incident.

(2) **SENT TO GUARDIAN AND SERVICES COORDINATOR.** Copies of all unusual incident reports must be sent to the individual's services coordinator within five working days of the incident. Upon request of the guardian, copies of unusual incident reports shall be sent to the guardian within five working days of the incident. Such copies must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws. Copies of unusual incident reports may not be provided to a guardian when the report is part of an abuse or neglect investigation.

(3) **NOTIFICATION OF ALLEGATIONS OF ABUSE AND ABUSE INVESTIGATIONS.** The program must notify the CDDP immediately of an incident or allegation of abuse falling within the scope of OAR chapter 407, division 045.

(a) When an abuse investigation has been initiated, the Department or the Department's designee must provide notice to the program according to OAR chapter 407, division 045.

(b) When an abuse investigation has been completed, the Department or the Department's designee must provide notice of the outcome of the investigation according to OAR chapter 407, division 045.

(c) When a program receives notification of a substantiated allegation of abuse of an adult as defined in OAR 407-045-0260, the program must provide written notification immediately to:

- (A) The person found to have committed abuse;
- (B) Residents of the program;
- (C) Residents' services coordinators; and
- (D) Residents' guardians.

(d) The program's written notification must include:

- (A) The type of abuse as defined in OAR 407-045-0260;
- (B) When the allegation was substantiated; and
- (C) How to request a copy of the redacted Abuse Investigation and Protective Services Report.

(e) The program must have policies and procedures to describe how the program implements notification of substantiated abuse as listed in sections (3)(c) and (d) of this rule.

(4) **IMMEDIATE NOTIFICATION FOR SERIOUS ILLNESS, INJURY, OR DEATH.** In the case of a serious illness, injury, or death of an individual, the program must immediately notify:

(a) The individual's guardian or conservator, parent, next of kin, or other significant person;

- (b) The CDDP; and
- (c) Any agency responsible for or providing services to the individual.

(5) **EMERGENCY NOTIFICATION.** In the case of an individual who is away from the residence, without support beyond the time frames established by the ISP team, the program must immediately notify:

- (a) The individual's guardian, if any, or nearest responsible relative;
- (b) The individual's designated contact person;
- (c) The local police department; and
- (d) The CDDP.

Stat. Auth.: ORS 410.070 & 409.050

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

411-328-0560

Definitions

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means 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 OAR 407-045-0310.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(4) "Adult" means an individual 18 years or older with developmental disabilities.

(5) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative 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) "Aid 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.

(7) "Annual Individual Support Plan (ISP) Meeting" means an annual meeting, coordinated by a services coordinator of the community developmental disability program that is attended by the individual served, agency representatives who provide service to the individual, the individual's guardian, if any, relatives of the individual, or other persons, such as an advocate, as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an Individual Support Plan.

(8) "Board of Directors" means a group of persons formed to set policy and give directions to a program designed to provide residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(9) "Certificate" means a document issued by the Division to a provider of supported living services that certifies that the provider is eligible to receive state funds for these services.

(10) "Choice" means the individual's expression of preference, opportunity for, and active role 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 verbally, through sign language, or by other communication methods.

(11) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for the planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(12) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(13) "Controlled Substance" means any drug classified as Schedules 1 through 5 under the Federal Controlled Substance Act.

(14) "Department" means the Department of Human Services (DHS).

(15) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(16) "Director" means the person responsible for administration of the supported living program and provision of support services for individuals.

(17) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(18) "Entry" means the admission to a Division-funded service.

(19) "Exit" means either termination from a Division-funded developmental disability service provider or transfer from one Division-funded program to another. Exit does not mean transfer within a program within a county.

(20) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(21) "Health Care Provider" means a 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.

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(22) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

(23) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(24) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(25) "Individual Profile" means a written profile that describes the individual entering into supported living. The profile may consist of materials or assessments generated by the service provider or other related agencies, consultants, family members, or advocates.

(26) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's Plan of Care for Medicaid purposes.

(27) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the Individual Support Plan.

(28) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(29) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the individual or a person or agency authorized by a court to make decisions about services for the individual.

(30) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(31) "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.

(32) "Needs Meeting" means a process in which the Individual Support Plan team defines the 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 this meeting or discussion is used by the supported living provider to develop the individual's Transition Plan.

(33) "Personal Futures Planning" means an optional planning process for describing a desirable future for an individual with developmental disabilities. The planning process generally occurs around major life transitions (e.g. moving into a new home, graduation from high school, marriage, etc.). This process helps determine activities, supports, and resources that best create a desirable future for the individual.

(34) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(35) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(36) "Protection" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(37) "Psychotropic Medication" means 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.

(38) "Self-Administration of Medication" means the 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.

(39) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Division or other appropriate agency, to provide these services. For the purpose of these rules, "provider" or "program" is synonymous with "service provider."

(40) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(41) "Significant Other" means a person selected by the individual to be the individual's friend.

(42) "Staff" means a paid employee responsible for providing services to individuals and whose wages are paid in part or in full with funds contracted with the community developmental disability program or contracted directly through the Division.

(43) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(44) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(45) "Supported Living" means the service that provides the opportunity for individuals with developmental disabilities 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.

(46) "These Rules" means the rules in OAR chapter 411, division 328.

(47) "Transfer" means movement of an individual from one type of service to another within the same county, administered by the same service provider.

(48) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan is developed and approved by the Individual Support Plan team. The Transition Plan includes a summary of the services necessary to facilitate adjustment to supported living, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the Individual Support Plan development.

(49) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(50) "Volunteer" means any person providing services without pay to individuals receiving supported living services.

Stat. Auth.: ORS 409.050 & 410.070

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 309-041-0560 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

411-328-0610

Inspections and Investigations

(1) All services covered by these rules must allow the following types of investigations and inspections:

- Quality assurance, certificate renewal, and onsite inspections;
- Complaint investigations; and
- Abuse investigations.

(2) The Department, the Department's designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

(a) Open to inspection and investigation by the Department, the Department's designee, or proper authority; and

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(b) Submitted to or be made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or the Department's designee has determined to initiate an investigation, the service provider may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) When an abuse investigation has been initiated, the Department or the Department's designee shall provide notification in accordance with OAR 407-045-0290.

(7) The Department or the Department's designee shall conduct investigations as described in OAR 407-045-0250 to OAR 407-045-0360.

(8) When an abuse investigation has been completed, the Department or the Department's designee shall provide notice of the Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(9) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the service provider may conduct an investigation to determine if any other personnel actions are necessary.

(10) Upon completion of the Abuse Investigation and Protective Services Report, according to OAR 407-045-0330 the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate service provider. The service provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(11) A plan of improvement must be submitted to the CDDP and the Division for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050 & 410.070

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 309-041-0610 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

411-328-0670

Safety: Personnel

(1) BASIC PERSONNEL POLICIES AND PROCEDURES. The program 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 has been identified as an accused person in an abuse investigation. The program must also have in place and implement personnel policies and procedures that address disciplinary or termination of employment when the allegation of abuse has been substantiated.

(2) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES. Any employee of a private agency that contracts with a CDDP is a mandatory reporter. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees shall be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

(3) APPLICATION FOR EMPLOYMENT. An application for employment at the program must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(4) CRIMINAL RECORDS CHECKS. Any employee, volunteer, advisor, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will have contact with an individual of the program, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) Effective July 28, 2009, the program may not use public funds to support, in whole or in part, a person as described in section (4) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Section (4)(a) of this rule does not apply to employees of the service provider who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) Any staff, volunteer, advisor, or any subject individual as defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or its designee within 24 hours.

(5) DIRECTOR QUALIFICATIONS. The program must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years experience, including supervision, in developmental disabilities, social services, mental health, or a related field. Six years of experience, including supervision, in the field of developmental disabilities or a social service or mental health field may be substituted for a degree.

(6) STAFF QUALIFICATIONS. Any staff who supervises individuals must:

(a) Be at least 18 years of age;

(b) Be capable of performing the duties of the job as described in a current job description which he or she signed and dated; and

(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.

(7) PERSONNEL FILES AND QUALIFICATION RECORDS. The program must maintain a personnel file for each staff person. In addition, the program must maintain the following for each staff person in a file available to the Division or the Division's designee for inspection:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training and training on individual profiles and Transition Plan or ISP;

(c) Documentation that CPR and first aid certification were obtained from a recognized training agency within three months of employment and are kept current;

(d) Written documentation of 12 hours of job-related in-service training annually;

(e) Written documentation of an approved criminal records check by the Department;

(f) Written documentation of a TB test within two weeks of hire;

(g) Written documentation of employees' notification of mandatory reporter status;

(h) Written documentation of any founded report of child abuse or substantiated abuse; and

(i) Written documentation of any complaints filed against the staff person and the results of the complaint process, including, if any, disciplinary action.

Stat. Auth.: ORS 409.050 & 410.070

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 309-041-0670 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 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

411-330-0010

Statement of Purpose

The rules in OAR chapter 411, division 330 prescribe standards, responsibilities, and procedures for community developmental disability programs providing comprehensive services to adults with developmental disabilities required for those adults to remain at home or in their family homes.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 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

411-330-0020

Definitions

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means 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) "Adult" means an individual 18 years or older with developmental disabilities.

(4) "Advocate" means a person other than paid staff who has been selected by the individual with developmental disabilities, or by the individual's legal representative, to help the individual understand and make

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choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(5) "Assistant Director" means the assistant director of the Division, or that person's designee.

(6) "Case Management" means an organized service to assist individuals to select, obtain, and utilize resources and services.

(7) "Choice" means the individual's expression of preference, opportunity for, and active role 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 verbally, through sign language, or by other communication methods.

(8) "Client Process Monitoring System (CPMS)" means the Division's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(9) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(10) "Community Mental Health and Developmental Disability Program (CMHDDP)" means an entity that operates or contracts for all services for individuals with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems under the county financial assistance contract with the Department.

(11) "Comprehensive Services" mean a package of developmental disability services and supports that includes one of the following living arrangements regulated by the Division alone or in combination with any associated employment or community inclusion program regulated by the Division:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an adult in the individual or family home costing more than the individual cost limit for support services.

(c) Comprehensive services do not include support services for adults enrolled in support services brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(12) "Department" means the Department of Human Services (DHS).

(13) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(14) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(15) "Employer-Related Supports" mean activities that assist individuals and, when applicable, the individual's legal representatives or family members, with directing and supervising provision of services described in the In-Home Support Plan. Supports to the employer 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.

(16) "Entry" means admission to a Division-funded developmental disability service provider.

(17) "Exit" means either termination from a Division-funded developmental disability service provider or transfer from one Division-funded program to another. Exit does not mean transfer within a service provider's program within a county.

(18) "Family" for determining individual eligibility for in-home support services as a resident in the family home, for identifying persons who

may apply, plan, and arrange for individual supports, and for determining who may receive family training, means a unit of two or more persons that includes at least one person with developmental disabilities where the primary caregiver is:

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting an individual with developmental disabilities and the individual is related to one of the partners by blood, marriage, or legal adoption.

(19) "Fiscal Intermediary" means a person or entity that receives and distributes in-home support funds on behalf of an individual according to the individual's in-home support plan. The fiscal intermediary responsibilities may include activities and records related to payroll and payment of employer-related taxes and fees as an agent of individuals, or the individual's legal guardians, who employ persons to provide care, supervision, or training in the home or community. In this capacity, the fiscal intermediary does not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline employees.

(20) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(21) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with in-home support funds that:

(a) Is primarily in business to provide the service chosen by the individual to the general public; and

(b) Provides services for the individual through employees, contractors, or volunteers.

(22) "Immediate Family" for the purposes of determining whether in-home support funds may be used to pay a family member to provide services, means the spouse of an adult.

(23) "Incident Report" means a written report of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(24) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(25) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with in-home support funds who personally provides services to the individual.

(26) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(27) "In-Home Support (IHS)" means support that is:

(a) Required for an individual to live in the individual's home or the family home;

(b) Designed, selected, and managed by the individual or the individual's legal representative; and

(c) Provided in accordance with an In-Home Support Plan.

(28) "In-Home Support (IHS) Plan" means the written details of the supports, activities, costs, and resources required for an individual to achieve personal goals, or for a family to achieve outcomes related to supporting an individual in the home. The In-Home Support Plan is developed by the community developmental disability program, the individual, and the individual's legal representative (if applicable) or family to articulate decisions and agreements made during a person-centered process of planning and information gathering. If meetings are required for other parties to review or agree to the plan, these meetings are conducted in a manner, setting, and time consistent with individual and family needs and preferences. The In-Home Support Plan is the individual's Plan of Care for Medicaid purposes.

(29) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

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(30) "Legal Representative" means an attorney at law who has been retained by or for the adult, or a person or agency authorized by the court to make decisions about services for the individual.

(31) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program;

(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 a contract for all or part of a community mental health and developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Division.

(32) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(33) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse.

(34) "Nursing Care Plan" means a plan of care developed by a nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(35) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(36) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals and lifestyle preferences; and

(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.

(d) Methods for gathering information vary, but all are consistent with individual needs and preferences ranging from simple interviews with the individual, to informal observations in home and community settings, to formally structured meetings..

(37) "Positive Behavioral Theory and Practice" means a proactive approach to individual 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.

(38) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(39) "Provider" means a person, organization, or business that is selected by an individual or the individual's legal representative and paid with in-home support funds to provide support according to the individual's In-Home Support Plan.

(40) "Provider Organization" means an entity selected by an individual, the individual with the assistance of the individual's designee, or the individual's legal representative, and paid with in-home support funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(41) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities. For purposes of these rules, the term "case manager" is synonymous with "services coordinator".

(42) "Social Benefit" or "Social Service" means a service or financial assistance solely intended to assist an individual with a developmental disability to function in society on a level comparable to that of a person who does not have such a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without developmental disabilities; or

(C) Replace other governmental or community services available to an individual or family.

(b) Financial assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported at home or in the family home and must be either:

(A) Reimbursement for an expense previously authorized in an Individual Support Plan; or

(B) An advance payment in anticipation of an expense authorized in a previously authorized Individual Support Plan.

(43) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(44) "Support" means assistance individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(45) "These Rules" mean the rules in OAR chapter 411, division 330.

(46) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(47) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Division, upon written application by the community developmental disability program.

(48) "Volunteer" means any person providing services without pay to individuals receiving comprehensive in home support services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 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 25-2009(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

411-330-0060

In-Home Support Fund Assistance with Purchasing Supports

(1) A CDDP must only use IHS funds to assist individuals and the individual's legal representatives to purchase supports when the individual's services coordinator has developed a written and approved IHS Plan that meets requirements for development and content in OAR 411-330-0050 and:

(a) Identifies supports that are necessary for the individual to live in the individual's own home or in the family home;

(b) Specifies cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual;

(c) Identifies the resources needed to purchase the remainder of necessary supports; and

(d) Is the most cost-effective plan that safely meets the goals of the IHS Plan.

(2) Goods and services purchased with IHS funds must be provided only as social benefits as defined in OAR 411-330-0020.

(3) IHS funds may be disbursed on behalf of individuals. The method, amount, and schedule of payment must be specified in written agreements between the CDDP and the individual and the individual's legal representative, if any. The CDDP is specifically prohibited from:

(a) Reimbursement of individuals or individuals' legal representatives or families for expenses related to services; and

(b) Advancing funds to individuals or individuals' legal representatives or families to obtain services.

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(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 allow the individual or the individual's legal representative to freely redirect resources to purchase 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) When IHS funds are used to purchase supports for individuals, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse of an adult;

(b) Responsibility to immediately notify the individual's legal representative and 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 representative, or 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 IHS Plan.

(6) 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 or individual's legal representative, or employees of provider organizations who were hired prior to July 28, 2009 and 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 of an adult as defined in OAR 411-330-0020;

(C) Materials or equipment that have 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, and creating guardianships;

(I) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community 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 alternative to employment services for individuals with developmental disabilities 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 (e.g. employee paid time off, hourly "no-show" charges, and contractor preparation hours);

(M) Services, activities, materials, or equipment that are not necessary or cost-effective, 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 the individual's legal 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 representative, family, or service provider has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the IHS Plan, refused to cooperate with record keeping required to document use of IHS funds, or otherwise knowingly misused public funds associated with IHS services.

(7) The CDDP must inform individuals and individuals' legal representatives in writing of records and procedures required in OAR 411-330-0140(3)(c) regarding expenditure of IHS funds for direct assistance. During development of the IHS Plan, 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 IHS Plan and any other written service agreements.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 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

411-330-0070

Standards for Independent Providers Paid with In-Home Support Services Funds

(1) GENERAL INDEPENDENT PROVIDER QUALIFICATIONS. Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or individual's legal representative must:

(a) Be at least 18 years of age;

(b) Have approval to work based on a criminal records check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. Any person meeting the definition of subject individual as defined in OAR 407-007-0200 to 407-007-0370 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0200 to 407-007-0370. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes;

(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 spouse of the 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 on the IHS Plan, with such demonstration confirmed in writing by the employing individual, individual's legal representative, family, or designated advocate 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 being cared for;

(g) Hold current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training, and skill;

(h) Understand requirements of maintaining confidentiality and safeguarding individual information;

(i) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers;

(j) In the case of an agency, hold any license or certificate required by the state of Oregon or federal law or regulation to provide the services purchased by or for the individual; and

(k) If providing transportation, have a valid driver's license and proof of insurance, as well as other license or certificate that may be required

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under state and local law, depending on the nature and scope of the transportation service.

(2) Section (1)(c) of this rule does not apply to employees of individuals or individual's legal representative or employees of provider organizations who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or its designee within 24 hours.

(4) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized supports must:

(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 OIS 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.

(5) SOCIAL OR SEXUAL CONSULTANTS. Social or sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social or sexual consultation services; and

(b) Submit a resume to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, social work, counseling, or other behavioral science field and at least one year of experience with individuals with developmental disabilities; or

(B) Three years experience with individuals who present social or sexual issues and at least one year of that experience must include providing the services of a social or sexual consultant.

(6) NURSING CONSULTANTS. Nursing consultants providing specialized supports 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 developmental disabilities.

(7) ENVIRONMENTAL MODIFICATION CONSULTANTS. Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual, and developing cost-effective plans that shall make the home safe and accessible for the individual.

(8) ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS. Environmental accessibility adaptation providers must be building contractors licensed under OAR chapter 812 and OAR chapter 808.

(9) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 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

411-330-0100

Sanctions for Independent Providers, Provider Organizations, and General Business Providers

(1) Sanctions may be imposed on a provider when the CDDP 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 criminal records check upon hiring or authorization of service;

(b) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) Had his or her professional license suspended, revoked, or otherwise limited, or surrendered his or her license;

(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, as requested, records or documentation;

(g) Billed excessive or fraudulent charges or been convicted of fraud;

(h) Made false statement concerning conviction of crime or substantiation of abuse;

(i) Falsified required documentation;

(j) Not adhered to the provisions of OAR 411-330-0060(6) and OAR 411-330-0070; or

(k) Been suspended or terminated as a provider by another division within the Department.

(2) The following sanctions may be imposed on a provider:

(a) The provider may no longer be paid with IHS funds;

(b) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the CDDP or Division, as applicable; or

(c) The CDDP may withhold payments to the provider.

(3) If the CDDP makes a decision to sanction a provider, the CDDP must notify the provider by mail of the intent to sanction. The provider may appeal this action within 30 calendar days of the notice. The provider must appeal separately from any appeal of audit findings and overpayments.

(4) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Division's Assistant Director.

(5) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Division within 30 calendar days of the date the sanction notice was mailed to the provider.

(6) At the discretion of the Division, providers who have previously been terminated or suspended by any division within the Department may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 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

411-330-0120

Abuse and Unusual Incidents

(1) ABUSE PROHIBITED. No adult or individual as defined by OAR 411-330-0020 shall be abused nor shall abuse be tolerated by any employee, staff, or volunteer of the individual, provider organization, or CDDP.

(a) BASIC PERSONNEL POLICIES AND PROCEDURES. The CDDP must have in place personnel policies and procedures addressing suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member has been identified as an accused person in an abuse investigation. The CDDP must also have in place personnel policies and procedures addressing disciplinary action, including conditions for termination of employment when the allegation of abuse has been substantiated.

(b) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES. Any employee of a CDDP is a mandatory reporter. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees must be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

(2) UNUSUAL INCIDENTS.

(a) WRITTEN REPORT. A written report that describes any injury, accident, act of physical aggression, or unusual incident involving an individual and a CDDP employee must be prepared at the time of the incident and placed in the individual's record. Such description 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 recurrence of the injury, accident, physical aggression, or unusual incident.

(b) IMMEDIATE NOTIFICATION OF ALLEGATIONS OF ABUSE AND ABUSE INVESTIGATIONS. The CDDP must notify the Department immediately of an incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(A) When an abuse investigation has been initiated, the CDDP must provide notification in accordance with OAR 407-045-0290.

(B) When an abuse investigation has been completed, the CDDP must provide notification in accordance with OAR 407-045-0320

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(c) IMMEDIATE NOTIFICATION. In the case of a serious illness, injury, or death of an individual, the CDDP must immediately notify the individual's legal representative, parent, next of kin, and designated contact person.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 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

411-330-0140

In-Home Support Service Operation

(1) PERSONNEL POLICIES AND PRACTICES. The CDDP must maintain up-to-date written position descriptions for all services coordinators coordinating in-home support services that includes written documentation of the following for each staff person:

- (a) Reference checks and confirmation of qualifications prior to hire;
- (b) Satisfactory completion of basic orientation, including mandatory abuse reporting training;
- (c) Satisfactory completion of job-related in-service training;
- (d) Department approval to work based on a criminal records check;
- (e) Notification and acknowledgement of mandatory abuse reporter status;

(f) Any founded reports of child abuse or substantiated abuse;

(g) Any grievances filed against the staff person and the results of the grievance process, including, if any, disciplinary action; and

(h) Legal U.S. worker status.

(2) SERVICES COORDINATOR TRAINING. The CDDP must provide or arrange for services coordinators to receive training needed to provide or arrange for the IHS services.

(3) RECORD REQUIREMENTS. The CDDP must maintain records in compliance with this rule, applicable state and federal law, and other state rules regarding audits and clinical records and confidentiality.

(a) DISCLOSURE AND CONFIDENTIALITY. For the purpose of disclosure from individual medical records under these rules, the CDDPs are considered "providers" as defined in ORS 179.505(1), and 179.505 is applicable. Access to records by the Department does not require authorization by the individual or individual's legal representative. For the purposes of disclosure from non-medical individual records, all or portions of the information contained in these records 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) INDIVIDUAL RECORDS. The CDDP must maintain and make available on request for Department review up-to-date records for each individual receiving in-home support services. These records must include:

(A) An easily-accessed summary of basic information including individual name, family name (if applicable), individual's legal representative, or conservator (if applicable), address, telephone number, date of entry into the program, date of birth, sex, marital status, and individual financial resource information.

(B) Records related to receipt and disbursement of public and private support funds including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, verification that providers meet requirements of OAR 411-330-0070, and documentation that the individual and the individual's legal representative understand and accept or delegate record keeping responsibilities outlined in this rule;

- (C) Incident reports involving CDDP staff;
- (D) Assessments used to determine supports required, preferences, and resources;

(E) IHS Plan and reviews;

(F) Services coordinator correspondence and notes related to resource development and plan outcomes; and

(G) Customer satisfaction information.

(c) SPECIAL REQUIREMENTS FOR IHS DIRECT ASSISTANCE EXPENDITURES. The CDDP must develop and implement written policies and procedures concerning use of IHS funds to purchase goods and services that are described in the IHS Plan as required to meet the support needs of individuals. These policies and procedures must include but are not limited to:

(A) Minimum acceptable records of expenditures and under what conditions these records may be maintained by the individual or family:

- (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) Signed contracts and itemized invoices for any services purchased from independent contractors and professionals; and

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services.

(B) Procedures for confirming the receipt, and securing the use of specialized equipment and environmental accessibility adaptations:

(i) When specialized equipment is obtained for the exclusive use of an individual, the CDDP must record the purpose, final cost, and date of receipt:

(ii) The CDDP must secure use of equipment costing more than \$500 through a written agreement between the CDDP and the individual or the individual's legal representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties should the item be lost, damaged, or sold within that time period;

(iii) The CDDP must obtain prior authorization from the Division for environmental accessibility adaptations to the home costing more than \$1500;

(iv) The CDDP must ensure that projects for environmental accessibility adaptations to the home costing \$5000 or more are:

(I) Reviewed and approved by the Division before work begins and before final payment is made;

(II) Completed or supervised by a contractor licensed and bonded in Oregon;

(III) That steps are taken as prescribed by the Division for protection of the state's interest through liens or other legally available means; and

(v) The CDDP must obtain written authorization from the owner of a rental structure before any minor physical environmental accessibility adaptations are made to that structure.

(C) Return of purchased goods.

(i) Any goods purchased with IHS funds that are not used according to IHS Plan or according to an agreement securing the state's use may be immediately recovered.

(ii) Failure to furnish written documentation upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, or 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.

(d) GENERAL FINANCIAL POLICIES AND PRACTICES. The CDDP must:

(A) Maintain up-to-date accounting records accurately reflecting all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities, consistent with generally accepted accounting principles.

(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.

(e) RECORDS RETENTION. Records must be retained in accordance with OAR chapter 166, Secretary of State, Archives Division.

(A) Financial records, supporting documents, statistical records, and all other records (except client records) must be retained for a minimum of three years after the close of the contract period, or until audited.

(B) Client records must be kept for a minimum of seven years.

(4) OTHER OPERATING POLICIES AND PRACTICES. 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.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.6708

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

411-330-0160

Inspections and Investigations

(1) The CDDP must allow the following types of investigations and inspections to be performed by the Department, or other proper authority:

- (a) Quality assurance and on-site inspections;
- (b) Complaint investigations; and
- (c) Abuse investigations.

(2) Any inspection or investigation may be unannounced.

(3) All documentation and written reports required by these rules must be:

(a) Open to inspection and investigation by the Department, or other proper authority; and

(b) Submitted to or be made available for review by the Department, or other proper authority within the time allotted.

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(4) When abuse is alleged or death of an individual has occurred and a law enforcement agency or the Department has determined to initiate an investigation, the CDDP may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions shall be taken.

(5) Investigations must be completed as described in OAR 407-045-0250 to OAR 407-045-0360 and must include an Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(6) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the CDDP may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(7) Upon completion of the Abuse Investigation and Protective Service Report, according to OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law must be provided to the appropriate service provider. The provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(8) A plan of improvement must be submitted to the Division for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 430.6708

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

411-335-0020

Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005, and for the purposes of these rules, abuse of a child also means abuse as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means 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 OAR 407-045-0310.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a person who is responsible for the individual's care.

(4) "Adult" means an individual 18 years or older with developmental disabilities.

(5) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's guardian 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) "Agency Staff" means a person responsible for providing services directly or indirectly to children in proctor care, and whose wages or fees are paid in part or in full with funds sub-contracted with the community developmental disability program or contracted directly through the Division.

(7) "Aid 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.

(8) "Appeal" means the process under ORS chapter 183 that the licensed or certified provider may use to petition the suspension, denial, or revocation of their license or certificate or application.

(9) "Applicant" means a person, agency, corporation, or governmental unit, who applies for a certificate to operate a proctor agency providing 24-hour intensive individually, focused contracted services to children or adults with developmental disabilities experiencing emotional, medical, or behavioral difficulties.

(10) "Assistant Director" means the assistant director of the Division, or that person's designee.

(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.

This baseline measure serves as the reference point by which the ongoing efficacy of the Individual Support Plan is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of the Individual Support Plan team meeting.

(12) "Behavior Data Collection System" means the methodology specified within the individual's Behavior Support Plan that directs the process for recording observation, intervention, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(13) "Behavior Data Summary" means a document composed by the service provider to summarize episodes of physical intervention. The behavior data summary serves as a substitution for the requirement of individual incident reports for each episode of physical intervention.

(14) "Behavior Support Plan (BSP)" means a written strategy based on person-centered planning and a functional assessment that outlines specific instructions for service providers to follow, to cause an individual's challenging behaviors to become unnecessary, and to change the provider's own behavior, adjust environment, and teach new skills.

(15) "Board of Directors" means a group of persons formed to set policy and give directions to a program designed to provide residential services to individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(16) "Care" means 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. Care also includes being aware of the individual's general whereabouts at all times and monitoring the activities of the individual while at the proctor home to ensure the individual's health, safety, and welfare. The term "care" is synonymous with "services".

(17) "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.

(18) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(19) "Choice" means the individual's and guardian's expression of preference, opportunity for, and active role 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 verbally, through sign language, or by other communication methods.

(20) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(21) "Competency Based Training Plan" means a written description of the proctor agency's process for providing training to newly hired agency staff and proctor providers. At a minimum, the Competency Based Training Plan:

(a) Addresses health, safety, rights, values and personal regard, and the provider's mission; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented including steps for remediation, and when a competency may be waived by the agency to accommodate a staff person's or proctor provider's specific circumstances.

(22) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(23) "Condition" means a provision attached to a new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the proctor agency or proctor provider.

(24) "Contracting Entity" means the community developmental disability program or proctor agency contracting with the Division.

(25) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(26) "Denial" means the refusal of the Division to issue a certificate to operate a proctor agency because the Division has determined that the agency is not in compliance with one or more of these rules.

(27) "Department" means the Department of Human Services (DHS).

(28) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts

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adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(29) "Direct Nursing Service" means the provision of child-specific advice, plans, or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home or facility. 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) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(31) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process:

(a) When the parent 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 a parent or adult student.

(32) "Entry" means admission to a Division-funded developmental disability service provider. For purposes of these rules, "entry" means admission to a certified proctor provider home.

(33) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of the program's services for individuals.

(34) "Exit" means either termination from a Division-funded developmental disability service provider or transfer from one Division-funded proctor agency to another. Exit does not mean transfer within the proctor agency.

(35) "Foster Care" for the purpose of these rules means 24-hour substitute care for children in a certified foster home that is maintained and lived in by the person named on the foster home certificate, and contracted with the proctor agency.

(36) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(37) "Guardian" means a parent for individuals under 18 years of age or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(38) "Health Care Provider" means a 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.

(39) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual, written by the proctor provider or agency representative involved in or witnessing the incident.

(40) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(41) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(42) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(43) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's Plan of Care for Medicaid purposes.

(44) "Individual Support Plan (ISP) Team" means a team composed of the individual served, the foster provider, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the Individual Support Plan.

(45) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(46) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian.

(47) "Majority Agreement" means for purposes of entry, exit, transfer, and annual Individual Support Plan team meetings, that no one member of the Individual Support Plan team has the authority to make decisions for the team unless so authorized by the team process. Service providers, families, the services coordinator, or advocacy agencies are considered as one member of the Individual Support Plan team for the purpose of reaching majority agreement.

(48) "Mandatory Reporter" means any public or private official who comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(49) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around, and that restricts freedom of movement or access to the individual's body.

(50) "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.

(51) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include but are not limited to no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(52) "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.

(53) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how these needs shall be met. The Nursing Care Plan includes which tasks shall be taught or delegated to the provider and staff.

(54) "Oregon Core Competencies" means:

(a) A list of skills and knowledge for newly hired staff in the areas of health, safety, rights, values and personal regard, and the service provider's mission; and

(b) The associated timelines in which newly hired staff must demonstrate competencies.

(55) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(56) "Physical Intervention" means the use of any physical action or any response to maintain the health and safety of an individual or others during a potentially dangerous situation or event.

(57) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(58) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(59) "Proctor Agency" means an entity or program certified by the Division to provide contracted and supervised services in foster homes.

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(60) "Proctor Care Services" means a comprehensive residential program certified by the Division to provide intensive individually focused contracted foster care, training, and support to individuals with developmental disabilities, experiencing emotional, medical, or behavioral difficulties.

(61) "Proctor Provider" means the provider of the home who is either licensed as an adult foster home or certified as a child foster home for individuals with developmental disabilities.

(62) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(63) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(64) "Psychotropic Medication" means 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.

(65) "Respite" means intermittent services provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(66) "Revocation" means the action taken by the Division to rescind a proctor provider home or agency certificate after the Division has determined that the proctor provider home or agency is not in compliance with one or more of these rules.

(67) "Self-Administration of Medication" means the 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 the written order of a physician, and safely maintains the medication without supervision.

(68) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Division, or other appropriate agency, to provide these services. For the purpose of these rules, "provider", "proctor agency", "proctor agency staff", "applicant", "foster provider", "proctor provider", "alternative care-giver", "baby sitter", "respite provider", "crisis provider", "skill trainer" or "sub contractor" are synonymous with "service provider".

(69) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division, who is selected to plan, produce, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities as long as the Division holds the direct contract with the proctor agency.

(70) "Significant Other" means a person selected by the individual and guardian to be the individual's friend.

(71) "Specialized Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include but are not limited to low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A specialized diet does not include a diet where extra or additional food is offered without physician's orders but may not be eaten, for example, offer prunes each morning at breakfast or include fresh fruit with each meal.

(72) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(73) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(74) "Suspension of Certificate" means an immediate temporary withdrawal of the approval to operate a proctor provider home or agency after the Division determines that the proctor provider home or agency is not in compliance with one or more of these rules.

(75) "These Rules" mean the rules in OAR chapter 411, division 335.

(76) "Transfer" means movement of an individual from one proctor home to another within the same agency within the same county.

(77) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan is developed and approved by the Individual Support Plan team. The Transition Plan includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to assure health and safety, and the assessments and consultations necessary for the Individual Support Plan development.

(78) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring abuse investigation.

(79) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Division upon written application by the proctor provider or agency.

(80) "Volunteer" means any person assisting in a proctor home or the agency without pay to support the care provided to individuals residing in the home or facility.

Stat. Auth.: ORS 409.050, 410.070, 427.007, & 430.215

Stats. Implemented: ORS 430.021(4) & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07; 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

411-335-0030

Program 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 practices.

(2) BASIC PERSONNEL POLICIES AND PROCEDURES. The agency must have and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when an agency staff member, 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. Policy must reflect that any incurred crime as described under the criminal records check rules in OAR 407-007-0200 to 407-007-0370 shall be reported to the agency.

(3) 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.

(4) CRIMINAL RECORDS CHECKS. Any employee, volunteer, proctor provider, respite provider, crisis provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will have contact with a resident of the agency, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) Effective July 28, 2009, the agency may not use public funds to support, in whole or in part, a person as described in section (4) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Section (4)(a) of this rule does not apply to employees of the proctor provider or proctor agency who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) Any employee, volunteer, proctor provider, respite provider, crisis provider, advisor, skill trainer, or any subject individual defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or its designee within 24 hours.

(5) INVESTIGATIONS. For investigations conducted by the Department or the Department's designee in homes certified for children, the definitions of abuse described in ORS 419B.005 and OAR 407-045-0260 shall apply.

(6) PROHIBITION AGAINST RETALIATION. The agency may not retaliate against any agency staff member, subcontractor including respite providers and volunteers, or proctor providers that report in good faith suspected abuse, or retaliate against the individual, with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any community facility, community program, or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be 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 subsection, "adverse action" means any action taken by a community facility, community program, or

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person involved in a report against the person making the report or against the individual because of the report and includes but is not limited to:

(A) Discharge or transfer from the program, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the program or the individuals served by the program.

(7) **RESPONSIBILITIES OF PROCTOR AGENCY.** The proctor agency must:

(a) Implement policies and procedures to assure support, health, safety, and crisis response for individuals served, including policies and procedures to assure necessary training of agency staff and proctor providers.

(b) Implement policies and procedures to assure that provider payment and agency support is commensurate to the support needs of individuals enrolled in the proctor care services. Policies and procedures must include frequency of review.

(c) Implement policies and procedures to assure support, health, safety, and crisis response for individuals placed in all types of respite care, including policies and procedures to assure training of respite care providers. The types of respite care include but are not limited to:

(A) Respite care in the proctor provider's home during day hours only;

(B) Respite care in the home of someone other than the proctor provider for day time only;

(C) Overnight care in the proctor provider's home; and

(D) Overnight care at someone other than the proctor provider's home.

(d) Implement policies and procedures to assure confidentiality of individuals in service and of family information.

(e) Implement policies and procedures to review and document that each child enrolled in proctor care services continues to require such services. Policies and procedures must include frequency of review and the criteria as listed below.

(A) The child's need for a formal Behavior Support Plan based on the Risk Tracking Record and functional assessment of the behavior.

(B) The child has been stable and generally free of serious behavioral or delinquency incidents for the past 12 months.

(C) The child has been free of psychiatric hospitalization (hospital psychiatric unit, Oregon State Hospital, and sub acute) for the last 12 months, except for assessment and evaluation.

(D) The child poses no significant risk to self or community.

(E) The proctor provider has not needed or utilized the agency crisis services in response to the child's medical, mental health, or behavioral needs more than one time in the past 12 months.

(F) The proctor provider is successfully supporting the child over time, with a minimum of agency case management contact other than periodic monitoring and check in.

(G) The proctor provider does not require professional support for the child, and there has been or could be a reduction in ongoing weekly professional support for the child including consultation, skill training, and staffing.

(H) The proctor agency is not actively working with the child's family to return the child to the family home.

(f) **ADULTS IN PROCTOR SERVICES.** Implement policies and procedures where the ISP Team evaluates annually the adult individual's support needs and need for proctor services.

(g) Assure that preliminary certification or licensing activities (whichever is appropriate) are completed per the relevant foster care statutes and OAR chapter 411, divisions 346 or 360. Such work must be submitted to the Division for final review and approval.

(h) Complete an initial home study for all proctor provider applicants that are updated annually for all licensed or certified proctor providers.

(i) Provide and document training and support to agency staff, proctor providers, subcontractors, volunteers, and respite providers to maintain the health and safety of the individuals served.

(j) Provide and document training and support to the agency staff, proctor providers, subcontractors, volunteers, and respite providers to implement the ISP process, including completion of a Risk Tracking Record, development of protocols and BSP for each individual served, and the development of the ISP.

(k) Have a plan for emergency back-up for home provider including but not limited to use of crisis respite, other proctor homes, additional staffing, and behavior support consultations.

(l) Coordinate and document entries, exits, and transfers.

(m) Report to the Division, and the CDDP, any placement changes due to a Crisis Plan made outside of normal working hours. Notification must be made by 9:00 a.m. of the first working day after the change has happened.

(n) Assure that each proctor provider has a current Emergency Disaster Plan on file in the proctor provider home, in the agency office, and provided to the CDDP and any case manager of an individual who is not an employee of the local CDDP.

(o) Assure emergency backup in the event the proctor provider is unavailable.

(8) **GENERAL REQUIREMENTS FOR SAFETY AND TRAINING.** All volunteers having contact with the individual, proctor providers, substitute caregivers, respite providers, child care providers, and agency staff, except for those providing services in a crisis situation, must:

(a) Receive training specific to the individual. This training must at a minimum consist of basic information on environment, health, safety, ADLs, positive behavioral supports, and behavioral needs for the individual, including the ISP, BSP, required protocols, and any emergency procedures. Training must include required documentation for health, safety, and behavioral needs of the individual.

(b) Receive OIS training. OIS certification is required if physical intervention is likely to occur as part of the BSP. Knowledge of OIS principles, not certification is required if it is unlikely that physical intervention shall be required.

(c) Receive mandatory reporter training.

(d) Receive confidentiality training.

(e) Be at least 18 years of age and have a valid social security card.

(f) Be cleared by the Department's criminal records check requirements.

(g) Have a valid Oregon driver's license and proof of insurance.

(h) Receive training in applicable agency policies and procedures.

(9) In addition to the above general requirements, the following requirements must be met for each specific provider classification as listed below.

(a) **PROCTOR PROVIDERS:**

(A) Must receive and maintain current First Aid and CPR training.

(B) Must have knowledge of these rules and OAR divisions 346 or 360 as appropriate to their license or certificate.

(b) **SKILLS TRAINERS, ADVISORS, OR OTHER AGENCY STAFF:**

(A) Must receive and maintain current First Aid and CPR training.

(B) Must have knowledge of these rules and OAR divisions 346 or 360.

(C) Anyone age 18 or older, living in an agency staff persons uncertified home must have an approved Department criminal records check per OAR 407-007-0200 to 407-007-0370 and as described in section (4) of this rule, prior to any visit of an individual to the staff person's home.

(D) Must assure health and safety guidelines for alternative caregivers including but not limited to the following:

(i) The home and premises must be free from objects, materials, pets, and conditions that constitute a danger to the occupants and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for an individual in respite must be finished, attached to the house, and not a common living area, closet, storage area, or garage. If a child is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.

(iv) The alternative caregivers must have access to a working telephone in the home, and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents the individuals from accessing them, unless otherwise addressed in an individual's ISP.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(vii) First aid supplies must be available in the home and in the vehicles that shall be used to transport an individual.

(c) **RESPITE PROVIDERS.**

(A) **IN PROCTOR PROVIDER HOME – DAY OR NIGHT:**

(i) Must be trained on basic health needs of the individuals in service.

(ii) Must be trained on basic safety in the home including but not limited to first aid supplies, the Emergency Plan, and the Fire Evacuation Plan.

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(B) IN OTHER THAN PROCTOR PROVIDER HOME – DAY OR NIGHT. Must assure health and safety guidelines for alternative caregivers, including but not limited to:

(i) The home and premises must be free from objects, materials, pets, and conditions that constitute a danger to the occupants and the home and premises must be clean and in good repair.

(ii) Any sleeping room used for an individual in respite must be finished, have a window that may be opened, be attached to the house, and not a common living area, storage area, closet, or garage. If the individual is staying overnight, the sleeping arrangements must be safe and appropriate to the individual's age, behavior, and support needs.

(iii) The home must have tubs or showers, toilets, and sinks that are operable and in good repair with hot and cold water.

(iv) The alternative caregivers must have access to a working telephone in the home and must have a list of emergency telephone numbers and know where the numbers are located.

(v) All medications, poisonous chemicals, and cleaning materials must be stored in a way that prevents an individual from accessing them.

(vi) Firearms must be stored unloaded. Firearms and ammunition must be stored in separate locked locations. Loaded firearms must never be carried in any vehicle while it is being used to transport an individual.

(vii) First aid supplies must be available in the home and in the vehicles that shall be used to transport individuals.

(d) ALTERNATE CAREGIVERS.

(A) DAY CARE, CAMP:

(i) When a child is cared for by a child care provider, camp, or child care center, the proctor agency must assure that the camp, provider home, or center is certified, licensed, or registered as required by the Child Care Division (ORS 657A.280). The agency must also assure that the ISP team is in agreement with the plan for the child to attend the camp, child care center, or child care provider home.

(ii) Adults participating in employment or alternatives to employment must have such services addressed in their ISP. Any camping or alternative day service experience must be addressed in the ISP and approved by the ISP team.

(B) SOCIAL ACTIVITIES FOR LESS THAN 24 HOURS, INCLUDING OVERNIGHT ARRANGEMENTS:

(i) The proctor agency must assure the person providing care is capable of assuming all care responsibilities and shall be present at all times.

(ii) The proctor agency must assure that the ISP team is in agreement with the planned social activity.

(iii) The proctor agency must assure that the proctor provider maintains back-up responsibilities for the person in service.

(10) GENERAL CRISIS REQUIREMENTS FOR INDIVIDUALS ALREADY IN PROCTOR AGENCY HOMES.

(a) Crisis service providers must:

(A) Be at least 18 years of age.

(B) Have initial and annual approval to work based on current Department policies and procedures for review of criminal records check per OAR 407-007-0200 to 407-007-0370 and as described in section (4) of this rule, prior to supervising any individual. Providers serving children must also have a child welfare check completed on an annual basis.

(C) Upon placement of the individual, have knowledge of the individual's needs. This knowledge must consist of basic information on health, safety, ADLs, and behavioral needs for the individual, including the ISP, BSP, and required protocols. Training for the provider must include information on required documentation for health, safety, and behavioral needs of the individual.

(b) The agency must:

(A) Make follow-up contact with the crisis providers within 24 hours of the placement to assess and assure the individual's and provider's support needs are met.

(B) Initiate transition planning with the ISP team and document the plan within 72 hours.

(11) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES. Proctor agency staff and caregivers are mandatory reporters. Upon reasonable cause to believe that abuse has occurred, all members of the household and any proctor providers, substitute caregivers, agency employees, independent contractors, or volunteers must report pertinent information to the Department, the CDDP, or law enforcement. For reporting purposes the following shall apply:

(a) Notification of mandatory reporting status must be made at least annually to all proctor providers, agency employees, substitute caregivers, subcontractors, and volunteers, on forms provided by the Department.

(b) All agency employees and proctor providers must be provided with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(12) DIRECTOR QUALIFICATIONS. The proctor agency must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in 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.

(13) QUALIFICATIONS FOR PROCTOR AGENCY STAFF AND PROCTOR PROVIDERS INCLUDING SUBCONTRACTORS AND VOLUNTEERS. Any agency staff including skill trainers, respite providers, substitute caregivers, subcontractors, and volunteers must meet the following criteria:

(a) Be at least 18 years of age and have a valid social security card.

(b) Have approval to work based on current Department policies and a criminal records check completed by the Department as described in section (4) of this rule.

(c) Disclosed any founded reports of child abuse or substantiated abuse.

(d) Be literate and capable of understanding written and oral orders, be able to communicate with individual's physicians, services coordinators, and appropriate others, and be able to respond to emergency situations at all times.

(e) Have met the basic qualification in the agency's Competency Based Training Plan.

(f) Meet any additional qualifications specified for substitute caregivers in OAR 411-360-0110 and OAR 411-360-0120 if working in a home licensed as an adult foster home for individuals with developmental disabilities.

(14) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency must maintain clear, written, signed, and up-to-date job descriptions and respite agreements when applicable, as well as a file available to the Department or CDDP for inspection that includes written documentation of the following for each agency employee:

(a) Written documentation that references and qualifications were checked.

(b) Written documentation of an approved criminal records check by the Department as required by OAR 407-007-0200 to 407-007-0370.

(c) Written documentation of employees' notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter.

(d) Written documentation of any founded reports of child abuse or substantiated abuse.

(e) Written documentation kept current that the agency staff person has demonstrated competency in areas identified by the agency's Competency Based Training Plan as required by Oregon's Core Competencies defined in OAR 411-335-0020 and that is appropriate to their job description.

(f) Written documentation of 12 hours of job-related in-service training annually.

(g) Proctor providers must meet all of the standards in these rules and the standards that apply to the specific type of foster home:

(A) The child foster home certification standards in OAR chapter 411, division 346.

(B) The adult foster home licensing standards in OAR chapter 411, division 360.

(C) The child welfare administrative rules in OAR chapter 413, divisions 200 and 220.

(15) AGENCY DOCUMENTATION REQUIREMENTS. All documentation required by these rules must:

(a) Be prepared at the time, or immediately following the event being recorded.

(b) Be accurate and contain no willful falsification.

(c) Be legible, dated, and signed by the person making the entry.

(d) Be maintained for no less than three years.

(e) Be made readily available for the purposes of inspection.

(16) DISSOLUTION OF AGENCY. Prior to the dissolution of an agency, a representative of the governing body or owner of the agency must notify the Division 30 days in advance in writing and make appropriate arrangement for the transfer of individual's records.

Stat. Auth.: ORS 409.050, 410.070, 427.005, 427.007, & 430.215

Stats. Implemented: ORS 430.021 & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07;

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 5-2010, f. 6-29-10, cert. ef. 7-1-10

ADMINISTRATIVE RULES

411-335-0100

Inspections and Investigations

(1) All services covered by these rules must allow the following types of investigations and inspections:

(a) Quality assurance, certificate renewal, and onsite inspections including a review of records at the agency office, as well as onsite review of at least one or more proctor provider homes as selected by the Division;

(b) Complaint investigations; and

(c) Abuse investigations. Priority review may be given when protective service investigations have taken place.

(2) The Department, the Department's designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by these rules must be:

(a) Open to inspection and investigation by the Department, the Department's designee, or proper authority; and

(b) Submitted to or be made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or the Department's designee has determined to initiate an investigation, the provider may not conduct an internal investigation. For the purposes of this section, an internal investigation is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken to assure individual safety.

(6) When an abuse investigation has been initiated, the Department or the Department's designee shall provide notification in accordance with OAR chapter 407, division 045.

(7) The Department or the Department's designee shall conduct investigations as described in OAR chapter 407, division 045.

(8) When an abuse investigation has been completed, the Department or the Department's designee shall provide notice of the Abuse Investigation and Protective Services Report according to OAR chapter 407, division 045.

(9) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the agency may conduct an investigation to determine if any additional personnel actions are necessary.

(10) Upon completion of the Abuse Investigation and Protective Service Report, according to OAR chapter 407, division 045 the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate provider. The agency must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(11) A plan of correction must be submitted to the CDDP and the Division for any noncompliance found during an inspection under this rule.

Stat. Auth.: ORS 409.050, 410.070, 427.005, 427.007, & 430.215

Stats. Implemented: ORS 430.021 & 430.610 - 430.670

Hist.: SPD 33-2004, f. 11-30-04, cert. ef. 1-1-05; SPD 32-2006, f. 12-27-06, cert. ef. 1-1-07;

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

411-340-0020

Definitions

As used 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 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) "Activities of Daily Living (ADL)" mean those self-care activities that must be accomplished by an individual for continued well-being including mobility, dressing and grooming, bathing and personal hygiene, toileting, bowel and bladder care, and eating.

(4) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group.

(5) "Administration of Medication" means the act of a person responsible for the individual's care and employed by or under contract to the individual, the individual's legal representative, or a provider organization, of placing a medication in, or on, an individual's body.

(6) "Administrative Review" means the formal process that is used when the individual or the individual's legal representative is not satisfied with the decision made by the brokerage about a complaint involving the provision of services or a provider.

(7) "Adult" means an individual 18 years or older with developmental disabilities.

(8) "Assistant Director" means the assistant director of the Division, or that person's designee.

(9) "Basic Benefit" means the type and amount of support services available to each eligible individual, specifically:

(a) Access to the brokerage services listed in OAR 411-340-0120(1); and if required

(b) Access to an amount of support services funds used to assist with the purchase of supports listed in OAR 411-340-0130(6). Either:

(A) An amount when an individual is a Medicaid recipient and is eligible for, and has chosen to receive, services available through the Support Services Waiver; or

(B) An amount of the state's General Fund when an individual is either not eligible for Medicaid or Medicaid waiver services or does not otherwise receive Medicaid benefits.

(10) "Basic Supplement" means an amount of support services funds in excess of the basic benefit to which an individual may have access in order to purchase necessary supports based on demonstration of extraordinary long-term need on the Basic Supplement Criteria Inventory, Form DHS 0203.

(11) "Basic Supplement Criteria Inventory (Form DHS 0203)" means the written inventory of an individual's circumstances that is completed and scored by the brokerage to determine whether the individual is eligible for a basic supplement.

(12) "Benefit Level" means the total annual amount of support service funds for which an individual is eligible. The benefit level includes the basic benefit and any exceptions to the basic benefit financial limits.

(13) "Certificate" means a document issued by the Division 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 support services.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role in decision-making related to the selection of assessments, services, providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated verbally, through sign language, or by other communication methods.

(15) "Chore Services" mean services needed to maintain a clean, sanitary, and safe environment in an individual's home. Chore services include heavy household chores such as washing floors, windows, and walls, tacking down loose rugs and tiles, and moving heavy items of furniture for safe access and egress.

(16) "Client Process Monitoring System (CPMS)" means the Department's computerized system for enrolling and terminating services for individuals with developmental disabilities.

(17) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities according to OAR chapter 411, division 320. A community developmental disability program operates in a specific geographic service area of the state under a contract with the Division, Local Mental Health Authority, or other entity as contracted by the Division.

(18) "Community Living and Inclusion Supports" mean services that facilitate independence and promote community integration by supporting the individual to gain or maintain skills to live as independently as possible in the type of home the individual chooses. Community living and inclusion supports provide support for the individual to participate in activities in integrated settings that promote community inclusion and contribution.

(a) Community living and inclusion supports include supports designed to develop or maintain skills for self-care, ability to direct supports, care of the immediate environment, and may include instruction in skills an individual wishes to acquire, retain, or improve that enhance independence, productivity, integration, or maintain the individual's physical

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and mental skills. Community living and inclusions supports include supports in the following areas:

(A) Personal skills, which includes eating, bathing, dressing, personal hygiene, and mobility;

(B) Socialization, which includes development or maintenance of self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(C) Community participation, recreation, or leisure, which includes the development or maintenance of skills to use available community services, facilities, or businesses;

(D) Communication, which includes development or maintenance of expressive and receptive skills in verbal and non-verbal language and the functional application of acquired reading and writing skills; and

(E) Personal environmental skills, which includes development or maintenance of skills such as planning and preparing meals, budgeting, laundry, and housecleaning.

(b) Community living and inclusion supports may or may not be work related.

(19) "Complaint" means a verbal or written expression of dissatisfaction with services or providers.

(20) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the Division alone or in combination with any associated employment or community inclusion program regulated by the Division:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an individual in the individual or family home costing more than the individual cost limit.

(c) Comprehensive services do not include support services for adults enrolled in brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(21) "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 an individual is in emergent status. Crisis diversion services may include short-term residential placement services indicated on an individual's Support Services Brokerage Plan of Care Crisis Addendum, as well as additional support as described in an Individual Support Plan.

(22) "Department" means the Department of Human Services (DHS).

(23) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(24) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(25) "Emergent Status" means a temporary, unpredictable situation when an individual enrolled in a brokerage may be allowed to receive Division-paid support exceeding the individual cost limit to remain in the individual's home or family home or to enter a short-term out-of-home residential placement without exiting support services. Individuals are considered in emergent status when the community developmental disability program of the individual's county of residence has determined that the individual meets criteria for crisis diversion services according to OAR 411-320-0160.

(26) "Employer-Related Supports" mean activities that assist individuals and, when applicable, their family members with fulfilling roles and obligations as employers as described in the Individual Support Plan. Supports to the employer 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.

(27) "Entry" means admission to a Division-funded developmental disability service provider.

(28) "Environmental Accessibility Adaptations" mean physical adaptations that are necessary to ensure the health, welfare, and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(a) Environmental accessibility adaptations include but are not limited to:

(A) 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 detectors, light fixtures, and appliances;

(G) Sound and visual monitoring systems;

(H) Fencing;

(I) Installation of ramps, grab-bars, and electric door openers;

(J) Adaptation of kitchen cabinets and sinks;

(K) Widening of doorways;

(L) Handrails;

(M) Modification of bathroom facilities;

(N) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(O) Installation of non-skid surfaces;

(P) Overhead track systems to assist with lifting or transferring;

(Q) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; or

(R) Modifications to a vehicle to meet the unique needs of the individual (lift, interior alterations such as seats, head and leg rests and belts, special safety harnesses, or other unique modifications to keep the individual safe in the vehicle).

(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.

(29) "Environmental Modification Consultant" means either an independent provider, provider organization, or general business paid with support services funds, to provide advice to an individual, the individual's legal representative, or the individual's personal agent about the environmental accessibility adaptation required to meet the individual's needs.

(30) "Exit" means either termination from a Division-funded developmental disability service provider or transfer from one Division-funded program to another. Exit does not mean transfer within a provider's program within a county.

(31) "Family" for determining individual eligibility for brokerage services as a resident in the family home and for determining who may receive family training, means a unit of two or more persons that include at least one individual with developmental disabilities where the primary caregiver is:

(a) Related to the individual with developmental disabilities by blood, marriage, or legal adoption; or

(b) In a domestic relationship where partners share:

(A) A permanent residence;

(B) Joint responsibility for the household in general (e.g. child-rearing, maintenance of the residence, basic living expenses); and

(C) Joint responsibility for supporting a member of the household with developmental disabilities and the individual with developmental disabilities is related to one of the partners by blood, marriage, or legal adoption.

(32) "Family Training" means training and counseling services for the family of an individual that increase the family's capacity to care for, support, and maintain the individual in the home. Family training includes:

(a) Instruction about treatment regimens and use of equipment specified in the Individual Support Plan;

(b) Information, education, and training about the individual's developmental disability, medical, and behavioral conditions; and

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(c) Counseling for the family to relieve the stress associated with caring for an individual with developmental disabilities.

(33) "Fiscal Intermediary" means a person or entity that receives and distributes support services funds on behalf of an individual who employs persons to provide services, supervision, or training in the home or community according to the Individual Support Plan.

(34) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(35) "General Business Provider" means an organization or entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide the service chosen by 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 persons who actually provide support for the individual.

(36) "Habilitation Services" mean services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings. Habilitation services include supported employment and community living and inclusion supports.

(37) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing and contested case hearing.

(38) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(39) "Homemaker Services" mean the general household activities such as meal preparation and routine household services required to maintain a clean, sanitary, and safe environment in an individual's home.

(40) "Incident Report" means a written report of any unusual incident involving an individual.

(41) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(42) "Independent Provider" means a person selected by an individual or the individual's legal representative and paid with support services funds that personally provide services to the individual.

(43) "Individual" means an adult with developmental disabilities for whom services are planned and provided.

(44) "Individual Cost Limit" means the maximum annual benefit level available under the Support Services Waiver.

(45) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's plan of care for Medicaid purposes.

(46) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(47) "Legal Representative" means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(48) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(49) "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.

(50) "Mental Retardation" means significantly sub-average general intellectual functioning existing concurrently with significant impairments in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.

(51) "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.

(52) "Nursing Care Plan" means a plan developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or family.

(53) "Occupational Therapy" means the services provided by a professional licensed under ORS 675.240 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(54) "Personal Agent" means a person who works directly with individuals and families to provide or arrange for support services, is a case manager for the provision of waiver case management services, meets the qualifications set forth in OAR 411-340-0150(5), and is:

(a) A trained employee of a brokerage; or

(b) 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.

(55) "Personal Emergency Response Systems" mean electronic devices required by certain individuals to secure help in an emergency for safety in the community.

(56) "Person-Centered Planning" means a process, either formal or informal, for gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals 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.

(d) Methods for gathering information vary, but all are consistent with individual needs and preferences ranging from simple interviews with the individual, to informal observations in home and community settings, to formally structured meetings.

(57) "Physical Therapy" means the services provided by a professional licensed under ORS 688.020 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(58) "Plan Year" means 12 consecutive months used to calculate an individual's annual benefit level. Unless otherwise set according to the conditions of OAR 411-340-0120(6)(b), the initial plan year begins on the start date specified on the individual's first authorized Individual Support Plan after enrollment in a brokerage. Subsequent plan years begin on the anniversary of the start date of the initial Individual Support Plan.

(59) "Positive Behavioral Theory and Practice" means a proactive approach to individual 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.

(60) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(61) "Primary Caregiver" means the person identified in an Individual Support Plan as providing the majority of service and support for an individual in the individual's home.

(62) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

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(63) "Provider Organization" means an entity selected by an individual or the individual's legal representative, and paid with support services funds that:

(a) Is primarily in business to provide supports for individuals with developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the persons who actually provide support for the individual.

(64) "Provider Organization Director" means the employee of a provider organization, or the employee's designee, responsible for administration and provision of services according to these rules.

(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) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(67) "Respite" means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(68) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(69) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her 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.

(70) "Self-Determination" means a philosophy and process by which individuals with 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 a developmental disability, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority. The ability for an individual with a developmental disability, with the help of a social support network if needed, to control a certain sum of resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that shall assist an individual with a developmental disability to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role in an individual's 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 individuals with developmental disabilities.

(71) "Social Benefit" means a service or financial assistance solely intended to assist an individual with a developmental disability to function in society on a level comparable to that of a person who does not have such a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to persons regardless of developmental disability;

(B) Provide financial assistance with food, clothing, shelter, and laundry needs common to persons with or without developmental disabilities; or

(C) Replace other governmental or community services available to an individual.

(b) Financial assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the individual's home and must be either:

(A) Reimbursement for an expense previously authorized in an Individual Support Plan; or

(B) An advance payment in anticipation of an expense authorized in a previously authorized Individual Support Plan.

(72) "Special Diet" means 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. Special diets may include:

(a) High caloric supplements;

(b) Gluten-free supplements; and

(c) Diabetic, ketogenic, or other metabolic supplements.

(73) "Specialized Medical Equipment and Supplies" mean devices, aids, controls, supplies, or appliances that enable individuals to increase their abilities to perform activities of daily living or to perceive, control, or communicate with the environment in which they live. Specialized medical equipment and supplies include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the State Medicaid Plan. Specialized medical equipment and supplies may not include items not of direct medical or remedial benefit to the individual. Specialized medical equipment and supplies must meet applicable standards of manufacture, design, and installation.

(74) "Specialized Supports" mean treatment, training, consultation, or other unique services necessary to achieve outcomes in the Individual Support Plan that are not available through State Medicaid Plan services or other support services listed in OAR 411-340-0130(6). Typical supports include the services of a behavior consultant, a licensed nurse, or a social or sexual consultant to:

(a) Assess the needs of the individual and family, including environmental factors;

(b) Develop a plan of support;

(c) Train caregivers to implement the plan of support;

(d) Monitor implementation of the plan of support; and

(e) Revise the plan of support as needed.

(75) "Speech and Language Therapy" means the services provided by a professional licensed under ORS 681.250 that are defined under the approved State Medicaid Plan, except that the amount, duration, and scope specified in the State Medicaid Plan do not apply.

(76) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(77) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(78) "Supported Employment Services" means provision of job training and supervision available to assist an individual who needs intensive ongoing support to choose, get, and keep a job in a community business setting. Supported employment is a service planned in partnership with public vocational assistance agencies and school districts and through Social Security Work Incentives when available.

(79) "Support Services" mean the services of a brokerage listed in OAR 411-340-0120(1) as well as the uniquely determined activities and purchases arranged through the brokerage support services that:

(a) Complement the existing formal and informal supports that exist for an individual living in the individual's own home or family home;

(b) Are designed, selected, and managed by the individual or the individual's legal representative;

(c) Are provided in accordance with an Individual Support Plan; and

(d) May include purchase of supports as a social benefit required for an individual to live in the individual's home or the family home.

(80) "Support Services Brokerage" or "Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions listed in OAR 411-340-0120(1) associated with planning and implementation of support services for individuals with developmental disabilities.

(81) "Support Services Brokerage Director" or "Brokerage Director" means the employee of a publicly or privately-operated brokerage, or that person's designee, who is responsible for administration and provision of services according to these rules.

(82) "Support Services Brokerage Plan of Care Crisis Addendum" means the short-term plan that is required by the Division to be added to an Individual Support Plan to describe crisis diversion services an individual is to receive while the individual is in emergent status in a short-term residential placement.

(83) "Support Services Brokerage Policy Oversight Group" or "Policy Oversight Group" means the group that meets the requirements of OAR 411-340-0150(1) that is formed to provide consumer-based leadership and advice to each brokerage regarding issues such as development of policy, evaluation of services, and use of resources.

(84) "Support Services Funds" mean public funds designated by the brokerage for assistance with the purchase of supports according to each Individual Support Plan.

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(85) "These Rules" mean the rules in OAR chapter 411, division 340.

(86) "Transportation" means services that allow individuals to gain access to community services, activities, and resources that are not medical in nature.

(87) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

(88) "Volunteer" means any person providing care without pay to individuals receiving support services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 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

411-340-0030

Certification of Support Service Brokerages and Provider Organizations

(1) CERTIFICATE REQUIRED.

(a) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, manage, or operate a brokerage without being certified by the Division under this rule.

(b) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, or operate a provider organization without either certification under this rule or current Division license or certification as described in OAR 411-340-0170(1).

(c) Certificates are not transferable or assignable and are issued only for the brokerage, or for the provider organization requiring certification under OAR 411-340-0170(2), and persons or governmental units named in the application.

(d) Certificates are issued for a maximum of two years.

(e) The Division shall conduct a review of the brokerage, or the provider organization requiring certification under OAR 411-340-0170(2), prior to the issuance of a certificate.

(2) CERTIFICATION. A brokerage, or a provider organization requiring certification under OAR 411-340-0170(2), must apply for an initial certificate and for a certificate renewal.

(a) The application must be on a form provided by the Division and must include all information requested by the Division.

(b) The applicant requesting certification as a brokerage must identify the maximum number of individuals to be served.

(c) To renew certification, the brokerage or provider organization must make application at least 30 days but not more than 120 days prior to the expiration date of the existing certificate. On renewal of brokerage certification, no increase in the maximum number of individuals to be served by the brokerage may be certified unless specifically approved by the Division.

(d) Application for renewal must be filed no more than 120 days prior to the expiration date of the existing certificate and shall extend the effective date of the existing certificate until the Division takes action upon the application for renewal.

(e) Failure to disclose requested information on the application or providing incomplete or incorrect information on the application may result in denial, revocation, or refusal to renew the certificate.

(f) Prior to issuance or renewal of the certificate, the applicant must demonstrate to the satisfaction of the Division that the applicant is capable of providing services identified in a manner consistent with the requirements of these rules.

(3) CERTIFICATION EXPIRATION, TERMINATION OF OPERATIONS, OR CERTIFICATE RETURN.

(a) Unless revoked, suspended, or terminated earlier, each certificate to operate a brokerage or provider organization shall expire on the expiration date specified on the certificate.

(b) If a certified brokerage or provider organization is discontinued, the certificate automatically terminates on the date operation is discontinued.

(4) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION. The brokerage, or provider organization requiring certification under OAR 411-340-0170(2), must notify the Division in writing of any pending action resulting in a 5 percent

or more change in ownership and of any pending change in the brokerage's or provider organization's legal entity, legal status, or management corporation.

(5) NEW CERTIFICATE REQUIRED. A new certificate for a brokerage or provider organization is required upon change in a brokerage's or provider organization's ownership, legal entity, or legal status. The brokerage or provider organization must submit a certificate application at least 30 days prior to change in ownership, legal entity, or legal status.

(6) CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Division may deny, revoke, or refuse to renew a certificate when the Division finds the brokerage or provider organization, the brokerage or provider organization director, or any person holding 5 percent or greater financial interest in the brokerage or provider organization:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized and the brokerage or provider organization fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this rule, "inspection" means an on-site review of the service site by the Division for the purpose of investigation or certification);

(c) Has been convicted of a felony or any crime as described in OAR 407-007-0275;

(d) Has been convicted of a misdemeanor associated with the operation of a brokerage or provider organization;

(e) Falsifies information required by the Division to be maintained or submitted regarding services of individuals, program finances, or individuals' funds;

(f) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(g) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(7) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. Following a Division finding that there is a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in section (6) of this rule has occurred, the Division may issue a notice of certificate revocation, denial, or refusal to renew.

(8) IMMEDIATE SUSPENSION OF CERTIFICATE. When the Division finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Division may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the brokerage or provider organization may not continue operation.

(9) HEARING. An applicant for a certificate or a certificate holder may request a hearing pursuant to the contested case provisions of ORS chapter 183 upon written notice from the Division of denial, suspension, revocation, or refusal to renew a certificate. In addition to, or in lieu of a hearing, the applicant or certificate holder may request an administrative review by the Division's Assistant Director. An administrative review does not preclude the right of the applicant or certificate holder to a hearing.

(a) The applicant or certificate holder must request a hearing within 60 days of receipt of written notice by the Division of denial, suspension, revocation, or refusal to renew a certificate. The request for a hearing must include an admission or denial of each factual matter alleged by the Division and must affirmatively allege a short plain statement of each relevant, affirmative defense the applicant or certificate holder may have.

(b) In the event of a suspension pursuant to section (8) of this rule and during the first 30 days after the suspension of a certificate, the brokerage or provider organization may submit a written request to the Division for an administrative review. The Division shall conduct the review within 10 days after receipt of the request for an administrative review. Any review requested after the end of the 30-day period following certificate suspension shall be treated as a request for hearing under section (9)(a) of this rule. If following the administrative review the suspension is upheld, the brokerage or provider organization may request a hearing pursuant to the contested case provisions of ORS chapter 183.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 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 309-041-1770, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

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411-340-0040

Abuse and Unusual Incidents in Support Service Brokerages and Provider Organizations

(1) ABUSE PROHIBITED. No adult or individual as defined in OAR 411-340-0020 shall be abused nor shall any employee, staff, or volunteer of the brokerage or provider organization condone abuse.

(a) Brokerages and provider organizations must have in place appropriate and adequate disciplinary policies and procedures to address instances when a staff member has been identified as an accused person in an abuse investigation as well as when the allegation of abuse has been substantiated.

(b) All employees of a brokerage or provider organization are mandatory reporters. The brokerage or provider organization must:

(A) Notify all employees of mandatory reporting status at least annually on forms provided by the Department; and

(B) Provide all employees with a Department-produced card regarding abuse reporting status and abuse reporting.

(2) UNUSUAL INCIDENTS.

(a) A brokerage or provider organization must prepare an incident report at the time of an unusual incident, as defined in OAR 411-340-0020, involving an individual and a brokerage or provider organization employee. The incident report must be placed in the individual's record and must include:

(A) Conditions prior to or leading to the unusual incident;

(B) A description of the unusual incident;

(C) Staff response at the time; and

(D) Review by the brokerage administration and follow-up to be taken to prevent recurrence of the unusual incident.

(b) A brokerage or provider organization must send copies of all incident reports involving abuse that occurs while an individual is receiving brokerage or provider organization services to the CDDP.

(c) A provider organization must send copies of incident reports of all unusual incidents that occur while the individual is receiving services from a provider organization to the individual's brokerage within five working days of the unusual incident.

(d) The brokerage must immediately report to the CDDP, and the provider organization must immediately report to the CDDP with notification to the brokerage, any incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(A) When an abuse investigation has been initiated, the CDDP must provide notice to the program according to OAR 407-045-0290.

(B) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the investigation according to OAR 407-045-0320.

(e) In the case of a serious illness, injury, or death of an individual, the brokerage or provider organization must immediately notify:

(A) The individual's legal representative, parent, next of kin, designated contact person, or other significant person;

(B) The CDDP;

(C) In the case of the provider organization, the individual's brokerage; and

(D) The Division.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 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 309-041-1780, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-340-0050

Inspections and Investigations in Support Service Brokerages and Provider Organizations

(1) Entities certified under these rules must allow the following types of investigations and inspections:

(a) Quality assurance and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) The Department, CDDP, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, CDDP, or proper authority; and

(b) Submitted to the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, the Department, or CDDP has determined to initiate an investigation, the brokerage or provider organization may not conduct an internal investigation without prior authorization from the Department. For the purposes of this rule, an "internal investigation" is defined as:

(a) Conducting interviews with the alleged victim, witness, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken.

(6) The Department or the CDDP shall conduct abuse investigations as set forth in OAR 407-045-0250 to OAR 407-045-0360 and shall complete an abuse investigation and protective services report according to OAR 407-045-0320.

(7) Upon completion of the abuse investigation by the Department, CDDP, or a law enforcement agency, a provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(8) Upon completion of the abuse investigation and protective services report, in accordance with OAR 407-045-0330, the sections of the report that are public records and not exempt from disclosure under the public records law shall be provided to the appropriate brokerage or provider organization.

(9) The brokerage or provider organization may be required to submit to the Division a plan of improvement for any noncompliance found during an inspection pursuant to section (1)(a) of this rule.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 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 309-041-1790, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-340-0070

Support Services Brokerage and Provider Organization Personnel Policies and Practices

(1) Brokerages and provider organizations must maintain up-to-date written position descriptions for all staff as well as a file available to the Division or CDDP for inspection that includes written documentation of the following for each staff:

(a) Reference checks and confirmation of qualifications prior to hire;

(b) Written documentation of an approved criminal records check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370;

(c) Satisfactory completion of basic orientation, including instructions for mandatory reporting and training specific to developmental disabilities and skills required to carry out assigned work if the employee is to provide direct assistance to individuals;

(d) Written documentation of employee notification of mandatory reporter status;

(e) Written documentation of any founded report of child abuse or substantiated abuse;

(f) Written documentation of any complaints filed against the staff and the results of the complaint process, including if any, disciplinary action; and

(g) Legal eligibility to work in the United States.

(2) Any employee providing direct assistance to individuals must be at least 18 years of age and capable of performing the duties of the job as described in a current job description signed and dated by the employee.

(3) An application for employment at the brokerage or provider organization must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(4) Any employee of the brokerage or provider organization, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will have contact with an eligible individual of support services, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(5) Effective July 28, 2009, a person may not be authorized as a provider or meet qualifications as described in this rule if the person has

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been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(6) Section (5) of this rule does not apply to employees of the brokerage or provider organization who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(7) Each brokerage and provider organization regulated by these rules must be a drug-free workplace.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 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 309-041-1810, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; 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 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

411-340-0080

Support Service Brokerage and Provider Organization Records

(1) CONFIDENTIALITY. Brokerage and provider organization records of services to individuals must be kept confidential in accordance with ORS 179.505, 45 CFR 205.50, 45 CFR 164.512 Health Insurance Portability and Accountability Act (HIPAA), 42 CFR Part 2 HIPAA, and any Department rules or policies pertaining to individual service records.

(2) DISCLOSURE AND CONFIDENTIALITY.

(a) For the purpose of disclosure from individual medical records under these rules, brokerages, and provider organizations requiring certification under OAR 411-340-0170(2), shall be considered “providers” as defined in ORS 179.505(1), and 179.505 shall be applicable.

(b) Access to records by the Department does not require authorization by the individual or family.

(c) For the purpose of disclosure from 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(2).

(3) GENERAL FINANCIAL POLICIES AND PRACTICES. The brokerage or provider organization must:

(a) Maintain up-to-date accounting records consistent with generally accepted accounting principles that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities, and equities.

(b) As a provider organization, or as a brokerage offering services to the general public, establish and revise as needed a fee schedule identifying the cost of each service provided. Billings for Title XIX funds may not exceed the customary charges to private individuals for any like item or service charged by the brokerage or provider organization.

(c) Develop and implement written statements of policy and procedure as are necessary and useful to assure compliance with any Department rule pertaining to fraud and embezzlement.

(4) 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 individual records) must be retained for a minimum of three years after the close of the contract period.

(b) Individual records must be kept for a minimum of seven years.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 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 309-041-1820, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; 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

411-340-0130

Using Support Services Funds to Purchase Supports

(1) A brokerage may use support services funds to assist individuals to purchase supports in accordance with an ISP when:

(a) Supports are necessary for an individual to live in the individual's own home or in the family home;

(b) Cost-effective arrangements for obtaining the required supports, applying public, private, formal, and informal resources available to the eligible individual are specified in the ISP;

(c) An individual is receiving crisis diversion services according to OAR 411-320-0160 and:

(A) Crisis diversion services are not allowed by OAR 411-320-0160 to provide the necessary support;

(B) The support was identified as necessary prior to the onset of the crisis;

(C) Support services funds are not expended to such an extent that the support services funds that may be required to purchase the remainder of necessary supports following the termination of crisis diversion services shall be unavailable; and

(D) Support services funds are used for no more than 90 days following the determination that the individual shall enter a comprehensive service.

(d) The ISP projects the amount of support services funds, if any, that may be required to purchase the remainder of necessary supports that are within the benefit level; and

(e) The ISP has been authorized for implementation.

(2) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(3) LIMITS OF FINANCIAL ASSISTANCE. Assistance with purchase of individual supports in any plan year is limited to the individual's annual benefit level.

(a) Individuals must have access throughout the plan year to the total annual amount of support services funds for which they are eligible that are determined to be necessary to implement an authorized ISP, even if there is a delay in implementation of the ISP, unless otherwise agreed to in writing by the individual or the individual's legal representative.

(b) The Division may require that annual benefit level amounts be calculated and applied on a monthly basis when an individual's eligibility for Medicaid changes during a plan year, an individual's benefit level changes, or when an individual's ISP is developed and written to be in effect for less than 12 months.

(A) Except in the case of an individual whose benefit level changes as the result of a change in eligibility for the Support Services Waiver, when an individual's benefit level changes, the monthly benefit level shall be 1/12 of the annual benefit level for which the individual would be eligible should the change in benefit level remain in effect for 12 calendar months. The monthly benefit level shall be applied each month for the remainder of the plan year in which the individual's change in benefit level occurred, from the date the change occurred.

(B) In the case of an individual whose Support Services Waiver eligibility changes, the new monthly benefit level is calculated based on the remainder of the General Fund contribution to the individual benefit level being evenly distributed across the remaining months of the plan year. The monthly benefit level shall be applied each month for the remainder of the plan year in which the individual's change in Support Services Waiver eligibility occurred, from the date the change occurred.

(C) In the case of an individual with an ISP developed for a partial plan year, the monthly benefit level shall be 1/12 of the annual benefit level for which the individual would be eligible should the individual's ISP be in effect for 12 calendar months. The monthly benefit level shall be applied each month during which the ISP of less than 12 months' duration is in effect.

(c) Estimates of individual plan costs must be based on the Division rate guidelines for costs of frequently used services.

(A) Division rate guidelines notwithstanding, final costs may not exceed local usual and customary charges for these services as evidenced by the brokerage's own documentation.

(B) The brokerage must establish a process for review and approval of all budgets based on estimates exceeding Division rate guidelines and must monitor the authorized ISP involved for continued cost effectiveness.

(4) EXCEPTIONS TO BASIC BENEFIT FINANCIAL LIMITS. Exceptions to the basic benefit annual support services fund limit may be only as follows.

(a) Individuals with extraordinary long-term need as demonstrated by a score of 60 or greater on the Basic Supplement Criteria Inventory (Form DHS 0203) may have access to a basic supplement in order to purchase necessary supports.

(A) For Medicaid recipients choosing services under the Support Services Waiver, the basic supplement must result in a plan year cost that is not greater than the individual cost limit.

(B) For individuals who are not Medicaid recipients choosing services under the Support Services Waiver, the basic supplement must result in a plan year cost that is not greater than the state's General Fund contribution to the individual cost limit, calculated according to the Medicaid match rate current at the beginning of the plan year, and adjusted annually to correspond to changes in the Medicaid match rates.

(C) The brokerage director, or a designee from brokerage management and administration, must administer the Basic Supplement Criteria Inventory only after receiving Division-approved training. The brokerage

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director or designee must score basic supplement criteria according to written and verbal instruction received from the Division.

(D) The trained brokerage director or a designee from a brokerage's management or administration must administer the Basic Supplement Criteria Inventory within 30 calendar days of the documented request of the individual or the individual's legal representative.

(E) The brokerage director or designee must send written notice of findings regarding eligibility for a basic supplement to the individual and the individual's legal representative within 45 calendar days of the written request for a basic supplement. This written notice must include:

(i) An offer for the individual and the individual's legal representative to discuss the findings in person with the director and with the individual's personal agent in attendance if desired;

(ii) A notice of the complaint process under OAR 411-340-0060; and

(iii) A notice of planned action.

(F) Annual ISP reviews for recipients of the basic supplement must include a review of circumstances and resources to confirm continued need according to the instructions included with the Basic Supplement Criteria Inventory.

(b) Individuals who have been assessed as in need of, and meeting criteria for, crisis diversion services by the CDDP of the individual's county of residence according to OAR 411-320-0160, may receive short-term assistance with purchase of support in excess of the individual's benefit level. Use of crisis diversion services may only be authorized by the CDDP of the individual's county of residence or by the Regional Crisis Diversion Program responsible for the individual's county of residence.

(A) Length of emergent status may be authorized only by the CDDP of the individual's county of residence, or the Regional Crisis Diversion Program responsible for the individual's county of residence, depending on the source of the crisis diversion funds. Emergent status for an individual shall not exceed 270 consecutive days.

(B) Funds associated with crisis diversion services may be used to pay the difference in cost between the authorized ISP and the supports authorized by either the CDDP of the individual's county of residence or the Regional Crisis Diversion Program responsible for crisis diversion services in the individual's county of residence, depending on the source of crisis diversion services funds required to meet the short-term need.

(C) Although costs for crisis diversion services may bring the individual's total plan year cost temporarily above the individual cost limit, the individual's costs may not exceed the cost of the state's current ICF/MR daily cost per individual nor shall plan year expenses at or above the individual cost limit make the individual eligible for comprehensive services.

(i) Individuals placed in emergent status due to receiving crisis diversion services authorized and provided according to OAR 411-320-0160 may remain enrolled in, and receive support services from, the brokerage while both crisis diversion services and support services are required to stabilize and maintain the individual at home or in the family home. In no case, may the individual remain enrolled in the brokerage under emergent status for more than 270 consecutive days.

(ii) Support services provided during emergent status are subject to all requirements of this rule.

(iii) The individual's personal agent must participate with CDDP or Regional Crisis Diversion Program staff in efforts to stabilize supports and return costs to the individual's benefit level, documenting reviews of effectiveness at least every 90 days while the individual is receiving crisis diversion services.

(c) Individuals whose source of support funds are, in whole or in part, an individual-specific redirection of funds through a Division contract from a Division-regulated residential, work, or day habilitation service to support services funds, or to comprehensive in-home support funds regulated by OAR chapter 411, division 330 prior to enrollment in a brokerage, may have access to the amount specified in the Division contract as available for the individual's use. This provision is only applicable when each transition is separate and specific to the individual and the services being converted are not subject to statewide service transitions.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and the individual's legal representative at least annually and must make budget reductions when allowed by the ISP.

(d) Individuals whose support funds were specifically assigned through a Division contract to self-directed support services prior to the date designated by the Division for transfer of the individual from self-directed support services to a brokerage may have access to the amount specified in the Division contract as available for the individual's use.

(A) Individual plan year costs must always be less than the individual cost limit; and

(B) The brokerage must review the need for supports and their cost-effectiveness with the individual and the individual's legal representative at least annually and must make budget reductions when allowed by the ISP.

(c) Individuals transferring from the Division's Home and Community-Based Waiver Services for the Aged and Adults with Physical Disabilities who have been determined ineligible for those waiver service funds in accordance with OAR 411-015-0015(4)(c), shall have limited access to support services funds as described in these rules. The amount of support services funds available shall be equal to the Division's previous service costs for the individual for no more than 365 calendar days. The 365 calendar days begins the date the individual starts receiving support services exclusively through a brokerage.

(f) For Medicaid recipients eligible for and choosing services under the Support Services Waiver, individuals may have access to a basic supplement for ADLs to purchase needed support services under the following conditions:

(A) The individual must have additional assistance needs with ADLs after development of their ISP within the basic benefit, extraordinary long-term need fund limit, or other exceptions provided in this rule. The services include:

(i) Basic personal hygiene;

(ii) Toileting, bowel, and bladder care;

(iii) Mobility, transfers, and comfort;

(iv) Planning and preparing nutritious meals and assuring adequate fluid intake;

(v) Assisting with administration of medications, assuring medication is taken as ordered by physician, observing for reactions, and reminding appropriate persons when prescriptions need to be filled;

(vi) Maintaining clean oxygen equipment and supply; and

(vii) Delegated nursing tasks.

(B) ADL services may include the following activities if they are incidental to the provision of ADLs, essential for the health and welfare of the individual, and provided solely for the individual receiving support services:

(i) Light housekeeping tasks necessary to maintain a healthy and safe environment;

(ii) Arranging for necessary medical appointments;

(iii) Observation of an individual's status and reporting of significant changes to appropriate people;

(iv) First aid and handling emergencies; and

(v) Extra support due to developmental disability.

(C) Activities and goals related to the provision of ADL services must be sufficiently documented in the individual's ISP.

(D) Planned expenses must be based upon the least costly means of providing adequate services and must only be to the extent necessary to meet the documented ADL needs.

(E) The supplement for ADLs may not cause the cost per any plan year to exceed the individual cost limit. There is an exception for individuals receiving both support services under these rules who had a benefit level at the individual cost limit and state plan personal care services under OAR chapter 411, division 034, as of June 30, 2005. These individuals may continue to access the basic supplement and the supplement for ADLs until the individual terminates their receipt of support services or becomes ineligible for one of the supplements. The combined basic benefit, the basic supplement, and supplement for ADLs must remain above the individual cost limit to remain eligible for this exception.

(F) For Medicaid recipients receiving state plan personal care services under OAR chapter 411, division 034 entering support services after June 30, 2005, the Medicaid Personal Care Assessment (Form SDS 0531A) shall serve as the individual's authorized ISP for a period not to exceed 90 days.

(G) The supplemental ADL services are not intended to replace the resources available to an individual receiving support services under these rules from their natural support system of relatives, friends, neighbors, or other available sources of support.

(5) 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 up to the amount agreed upon in 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.

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(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or the individual's legal representative.

(6) TYPES OF SUPPORTS PURCHASED. Supports eligible for purchase with support services funds are:

(a) Chore services. Chore services may be provided only in situations where no one else in the household is capable 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;

(b) Community living and inclusion supports;

(c) Environmental accessibility adaptation;

(d) Family training;

(A) Family training must be provided:

(i) By licensed psychologists, medical professionals, clinical social workers, or counselors as described in OAR 411-340-0160(9); or

(ii) In organized conferences and workshops that are limited to topics related to the individual's developmental disability, identified support needs, or specialized medical or rehabilitative support needs.

(B) Family training may not be provided to paid caregivers.

(e) Homemaker services. Homemaker services may be provided only when the person regularly responsible for general housekeeping activities as well as caring for an individual in the home is temporarily absent, temporarily unable to manage the home as well as care for self or the individual in the home, or needs to devote additional time to caring for the individual;

(f) Occupational therapy services;

(g) Personal emergency response systems;

(h) Physical therapy services;

(i) Respite;

(A) Respite may be provided in the individual's or respite provider's home, a foster home, a group home, a licensed day care center, or a community care facility that is not a private residence.

(B) Respite includes two types of care, neither of which may be characterized as eight-hours-a-day, five-days-a-week services or provided to allow caregivers to attend school or work.

(i) Temporary respite must be provided on less than a 24-hour basis.

(ii) Twenty-four hour overnight care must be provided in segments of 24-hour units that may be sequential but may not exceed 14 consecutive days without permission from the Division.

(j) Special diets. Special diets may not provide or replace the nutritional equivalent of meals and snacks normally required regardless of developmental disability.

(k) Specialized medical equipment and supplies as well as the following provisions:

(A) When specialized medical equipment and supplies are primarily and customarily used to serve a medical purpose, the purchase, rental, or repair of specialized medical equipment and supplies with support services funds must be limited to the types of equipment and supplies permitted under the State Medicaid Plan and specifically those that are not excluded under OAR 410-122-0080.

(B) Support services funds may be used to purchase more of an item than the number allowed under the State Medicaid Plan after the limits specified in the State Medicaid Plan have been reached, requests for purchases have been denied by the State Medicaid Plan or private insurance, and the denial has been upheld in an applicable hearing or private insurance benefit appeals process.

(C) Devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the individual's abilities to perform ADLs or to perceive, control, or communicate with the environment in which the individual lives, may be purchased with support services funds when the individual's developmental disability otherwise prevents or limits the individual's independence in these areas. Equipment and supplies that may be purchased for this purpose must be of direct benefit to the individual and include:

(i) Adaptive equipment for eating, (i.e., utensils, trays, cups, bowls that are specially designed to assist an individual to feed him or herself);

(ii) Positioning devices;

(iii) Specially designed clothes to meet the unique needs of the individual, (e.g., clothes designed to prevent access by the individual to the stoma, etc.);

(iv) Assistive technology items;

(v) Computer software used by the individual to express needs, control supports, plan, and budget supports;

(vi) Augmentative communication devices;

(vii) Environmental adaptations to control lights, heat, stove, etc.; or

(viii) Sensory stimulation equipment and supplies that help an individual calm, provide appropriate activity, or safely channel an obsession (e.g., vestibular swing, weighted blanket, tactile supplies like creams and lotions);

(l) Specialized supports;

(m) Speech and language therapy services;

(n) Supported employment; and

(o) Transportation.

(7) 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 allow the individual to freely redirect support services funds to purchase 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 cannot 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;

(D) A provider organization resulting from the combined arrangements for community living and inclusion supports or supported employment services must be certified according to these rules; and

(E) 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; and

(f) In accordance with OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities.

(8) 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 person or persons, if any, specified by the individual or the individual's legal 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 the ISP.

(d) The provisions of section (9) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(9) SANCTIONS FOR INDEPENDENT PROVIDERS, PROVIDER ORGANIZATIONS, AND GENERAL BUSINESS PROVIDERS.

(a) A sanction may be imposed on a provider when the brokerage determines that, at some point after the provider's initial qualification and authorization to provide supports purchased with support services funds, the provider has:

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- (A) Been convicted of any crime that would have resulted in an unacceptable criminal records 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) Failed to safely and adequately provide the authorized services;
- (E) Had a founded report of child abuse or substantiated abuse;
- (F) Failed to cooperate with any Department or brokerage investigation or grant access to or furnish, as requested, records or documentation;
- (G) Billed excessive or fraudulent charges or been convicted of fraud;
- (H) Made false statement concerning conviction of crime or substantiation of abuse;
- (I) Falsified required documentation;
- (J) Failed to comply with the provisions of section (8) of this rule or OAR 411-340-0140; or
- (K) Been suspended or terminated as a provider by another division within the Department.

(b) The following sanctions may be imposed on a provider:

- (A) The provider may no longer be paid with support services funds;
 - (B) The provider may not be allowed to provide services for a specified length of time or until specified conditions for reinstatement are met and approved by the brokerage or the Division, as applicable; or
 - (C) The brokerage may withhold payments to the provider.
- (c) If the brokerage makes a decision to sanction a provider, the brokerage must notify the provider by mail of the intent to sanction.
- (d) The provider may appeal a sanction within 30 days of the date the sanction notice was mailed to the provider. The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a sanction by requesting an administrative review by the Division's Assistant Director.

(B) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Division within 30 days of the date the sanction notice was mailed to the provider.

(e) At the discretion of the Division, providers who have previously been terminated or suspended by any Department division may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 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

411-340-0140

Using Support Services Funds for Certain Purchases Is Prohibited

(1) Effective July 28, 2009, support services funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of individuals, individual's legal representatives, employees of general business providers, or employees of provider organizations who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) Support services funds may not be used to pay for:

- (a) Services, materials, or activities that are illegal;
- (b) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260;
- (c) Materials or equipment that have 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:
 - (A) Medications;
 - (B) Health insurance co-payments;
 - (C) Dental treatments and appliances;
 - (D) Medical treatments;
 - (E) Dietary supplements including but not limited to vitamins and experimental herbal and dietary treatments; or
 - (F) Treatment supplies not related to nutrition, incontinence, or infection control.
- (f) Ambulance services;
- (g) Legal fees;

(h) Vacation costs for transportation, food, shelter, and entertainment that would normally be incurred by anyone on vacation, regardless of developmental disability, and are not strictly required by the individual's need for personal assistance in all home and community settings;

(i) Individual services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(j) Services, activities, materials, or equipment that are not necessary, cost-effective, or do not meet the definition of support or social benefits as defined in OAR 411-340-0020;

(k) Educational services for school-age individuals over the age 18, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills, and post-secondary educational services such as those provided through two- or four-year colleges for individuals of all ages;

(l) Services provided in a nursing facility, correctional institution, or hospital;

(m) Services, activities, materials, or equipment that may be obtained by the individual or family through other available means such as private or public insurance, or other governmental or public services;

(n) Unless under certain conditions and limits specified in Division guidelines, employee wages or contractor charges for time or services when the individual is not present or available to receive services including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(o) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds; or

(p) Notwithstanding abuse as defined in OAR 407-045-0260, services when there is sufficient evidence to believe that the individual or the individual's legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use brokerage resources, or otherwise knowingly misused public funds associated with brokerage services

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 – 430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp), f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1880, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-340-0160

Standards for Independent Providers Paid with Support Services Funds

(1) GENERAL INDEPENDENT PROVIDER QUALIFICATIONS. Each independent provider who is paid as a contractor, a self-employed person, or an employee of the individual or the individual's legal representative to provide homemaker, respite, habilitation, transportation, chore, family training, occupational therapy, physical therapy, speech and language, dietician, or specialized supports must:

- (a) Be at least 18 years of age;
- (b) Have approval to work based on current Division policy and a criminal records check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. Any individual meeting the definition of subject individual as defined in OAR 407-007-0200 to 407-007-0370 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0200 to 407-007-0370. The Department's Background Check Request form must be completed by the subject individual to show intent to work at various homes;
- (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 spouse of the individual;
- (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 ISP, with such demonstration confirmed in writing by the individual or the individual's legal 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 being cared for.

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(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 individual information;

(i) Not be on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers; and

(j) If providing transportation, have a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(2) Section (1)(c) of this rule does not apply to employees of individuals or individual's legal representatives, employees of general business providers, or employees of provider organizations who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or its designee within 24 hours.

(4) **BEHAVIOR CONSULTANTS.** Behavior consultants providing specialized supports must:

(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 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 must include providing the services of a behavior consultant.

(5) **SOCIAL OR SEXUAL CONSULTANTS.** Social or sexual consultants providing specialized supports must:

(a) Have the education, skills, and abilities necessary to provide social or sexual consultation services; and

(b) Submit a resume to the brokerage indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, social work, counseling, or other behavioral science field and at least one year of experience with individuals; or

(B) Three years experience with individuals who present social or sexual issues and at least one year of that experience must include providing the services of a social or sexual consultant.

(6) **NURSING CONSULTANTS.** Nursing consultants providing specialized supports must:

(a) Have a current Oregon nursing license; and

(b) 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) **ENVIRONMENTAL MODIFICATION CONSULTANTS.** Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing the needs of the individual, and developing cost-effective plans that shall make the home safe and accessible for the individual.

(8) **ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS.** Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board.

(9) **FAMILY TRAINING PROVIDERS.** Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Social workers licensed under ORS 675.530;

(c) Counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(10) **DIETICIANS.** Dietitians providing special diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007 & 430.610 - 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

411-350-0020

Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" mean activities usually performed in the course of a normal day in a child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Aide" means a nonlicensed caregiver who may or may not be a certified nursing assistant.

(4) "Assistant Director" means the assistant director of the Division, or that person's designee.

(5) "Billing Provider" means an organization that enrolls and contracts with the Division to provide services through its employees and bills the Division for the provider's services.

(6) "Child" means an individual who is under the age of 18 and eligible for medically fragile children services.

(7) "Clinical Criteria (Form DHS-0519)" means the assessment tool used by the Division to evaluate the intensity of the challenges and care needs of medically fragile children.

(8) "Cost Effective" means that in the opinion of the services coordinator, a specific service meets the child's service needs and costs less than, or is comparable to, other similar service options considered.

(9) "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 the registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047. Delegation by physicians is also allowed.

(10) "Department" means the Department of Human Services (DHS).

(11) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(12) "Family Home" means the residence of a child that may, for the purpose of these rules, include a certified foster home.

(13) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(14) "Grievance" means a process by which a person may air complaints and seek remedies.

(15) "Hospital Model Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children living in the family home who otherwise would have to be served in a hospital if the waiver program was not available.

(16) "In-Home Daily Care (IHDC)" means essential supportive daily care delivered by a qualified provider that enables a child to remain, or return to, the family home.

(17) "Mandatory Reporter" means any public or private official who comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(18) "Medicaid Fair Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a Medicaid service. This is a formal process required by federal law (42 CFR 431.200-250). A Medicaid Fair Hearing is also known as a contested case hearing.

(19) "Medically Fragile Children (MFC)" means children, who have a health impairment that requires long term, intensive, specialized services on a daily basis and who have been found eligible for medically fragile children services by the Division.

(20) "Medically Fragile Children's Unit (MFCU)" means the program for medically fragile children administered by the Division.

(21) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN) pursuant to ORS chapter 678.

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(22) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of a child, and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or primary caregiver. When a Nursing Care Plan exists, it becomes a part of the Plan of Care.

(23) "Nursing Tasks or Services" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks or services may be delegated.

(24) "OHP" means the Oregon Health Plan.

(25) "Parent" means biological parent, adoptive parent, or legal guardian.

(26) "Plan of Care" means a written document developed for each eligible child by the services coordinator and the primary caregiver that describes the individual needs of the child, the needs and resources of the family that impact the child, and how those individual needs shall be met with family and public resources. The Plan of Care includes the Nursing Care Plan when one exists.

(27) "Primary Caregiver" means the parent or foster provider that provides the direct care of the child at the times that a paid provider is not available.

(28) "Provider or Performing Provider" means a person who meets the requirements of OAR 411-350-0080 that is qualified to receive payment from the Division for in-home daily care. Providers work directly with medically fragile children. Providers may be employees of billing providers, employees of the parent, or independent contractors.

(29) "Respite" means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, the primary caregiver.

(30) "Service Budget" means the monthly dollar amount allotted for the care of the child based on the clinical criteria level of care determination. The service budget consists of in-home daily care and, if the child is on a waiver, waived services. Service budgets increase or decrease in direct relationship to the increasing or decreasing clinical criteria score.

(31) "Services Coordinator" means an employee of the Division who ensures a child's eligibility for medically fragile children services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

(32) "Specialized Diet" means specially prepared or particular types of food needed to sustain a child in the family home.

(33) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(34) "Supplant" means take the place of.

(35) "These Rules" mean the rules in OAR chapter 411, division 350.

(36) "Volunteer" means any person providing services without pay to a child receiving medically fragile children services.

(37) "Waived Services" mean a menu of disability related services and supplies, beyond in-home daily care and the Oregon Health Plan, that are specifically identified by the Title XIX Centers for Medicare and Medicaid Services Waiver.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0110, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-350-0050

Scope and Limitations of MFC Services

(1) MFC services are intended to support, not supplant, the natural supports supplied by the primary caregiver. The primary caregiver is expected to provide a minimum of 40 hours per week of the child's care. MFC services are not available to replace services provided by the primary caregiver or to replace other governmental or community services.

(2) MFC services may include, for a child on the Hospital Model Waiver, a combination of the following services based upon the needs of the child as determined by the services coordinator and as consistent with the child's Plan of Care:

(a) In-home daily care;

(b) Environmental accessibility adaptations; or

(c) Goods, services, and supplies.

(3) IN-HOME DAILY CARE (IHDC). IHDC services may include a combination of assistance with ADLs, nursing services, or other supportive services provided by qualified providers. The extent of the IHDC services may vary, but the extent of service is limited as described in this rule.

(a) The Division shall only authorize IHDC service hours that support a parent in their primary caregiving role.

(b) IHDC services include:

(A) Basic personal hygiene — Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care — Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters, ostomies, and bags;

(C) Mobility — Ambulation, transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition — Preparing meals, special diets, gastrostomy feedings, monitoring intake and output, and feeding;

(E) Skin care — Dressing changes and ostomy care;

(F) Respiratory — Monitoring and administering oxygen, applying and adjusting ventilators and other respiratory equipment, providing inhalation therapies, and monitoring and responding to apnea monitors and oximeters;

(G) Cardiovascular — Monitoring of vital signs, and monitoring, replacement, and flushing of vascular access sites;

(H) Neurological — Monitoring of seizures, administering medication, and observing status; and

(I) Other nursing or personal care tasks or services.

(c) When any of the IHDC services listed in section (3)(b) of this rule are essential to the health and welfare of the child and listed in the job description signed by the parent and paid provider, the provider may provide the following supportive services:

(A) Housekeeping tasks necessary to maintain a healthy and safe environment for the child;

(B) Arranging for necessary medical equipment, supplies, or medications;

(C) Arranging for necessary medical appointments;

(D) Accompanying the child to appointments, outings, or community-based activities; or

(E) Participating in activities with the child to enhance development or learning.

(d) The services coordinator shall base the number of IHDC service hours upon the projected amount of time to perform the specified assistance for the child, for which the child must be physically present. IHDC service hours may be spread throughout the time authorized in the billing form or used in large blocks of time as the parent determines. IHDC service hours may only be used when the child is physically residing in the family home.

(e) IHDC services must:

(A) Be previously authorized by the Division before services begin;

(B) Be based on the assessed service needs of the child consistent with, and documented in, the Plan of Care as determined by the services coordinator;

(C) Be delivered through the most cost effective method as determined by the services coordinator; and

(D) Include a physician's order when nursing services are to be provided. The Division determines whether payment of nursing services, or the hours of IHDC services as ordered by the physician, shall be authorized for payment according to these rules.

(f) The Division does not authorize IHDC service hours:

(A) That supplant the IHDC services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives.

(B) For the purpose of allowing a parent to work or attend school.

(4) ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.

(a) The Division shall authorize environmental accessibility adaptations when:

(A) Necessary to ensure the health, welfare, and safety of the child in the family home, or to enable the child to function with greater independence in the family home;

(B) Determined to be the most cost effective solution; and

(C) Provided in accordance with applicable state or local building codes by licensed contractors.

(b) Environmental accessibility adaptations exclude:

(A) Adaptations or improvements to the family home that are of general utility and are not of direct medical or remedial benefit to the child; and

(B) Adaptations that add to the total square footage of the family home.

(c) For environmental accessibility adaptations that singly or together exceed \$5,000, the Division may protect its interest for the entire amount of the adaptations through liens or other legally available means.

(d) Environmental accessibility adaptations that are provided in a rental structure must be authorized in writing by the owner of the structure

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prior to initiation of the work. This does not preclude any reasonable accommodations required under the Americans with Disabilities Act.

(5) **GOODS, SERVICES, AND SUPPLIES.** Goods, services, and supplies may include any combination of the following:

(a) **SPECIALIZED MEDICAL EQUIPMENT AND SUPPLIES.** Specialized medical equipment and supplies may include, among others, communication devices, adaptive clothing, adaptive eating equipment, or adaptive sensory or habilitation devices or supplies. Specialized medical equipment and supplies funded by OHP are excluded.

(b) **RESPIRE.** Respite services are authorized on a limited basis for relief of, or due to the temporary absence of, the primary caregiver. Respite services are not available to allow primary caregivers to attend school or work.

(c) **HOMEMAKER.** Homemaker services consist of general household activities to allow the primary caregiver time to care for the child. The Division shall not authorize homemaker services if the child receives paid IHDC of 16 hours or more per day regardless of the type of service provider.

(d) **CHORE.** Chore services are services needed to maintain the family home in a clean, sanitary, and safe environment. Chore services include heavy household chores such as window washing or carpet cleaning. Chore services may be provided only in situations where no one else in the family home, or any other person, is capable of performing or providing these services.

(e) **NON-MEDICAL TRANSPORTATION.** Non-medical transportation is provided in order to enable a child to gain access to community services, activities, and resources as specified in the Plan of Care. Non-medical transportation excludes transportation provided by family members. Non-medical transportation does not replace medical transportation furnished or reimbursed by OHP.

(f) **FAMILY TRAINING.** Funding for family training is included in the monthly service budget as calculated by the services coordinator. Family training services include services that increase the primary caregiver's capacity to care for the child.

(A) **CONFERENCE OR WORKSHOP REGISTRATIONS.**

(i) The Division shall authorize conference or workshop registrations that:

- (I) Directly relate to the child's disability; and
- (II) Increase the knowledge and skills of the primary caregiver.
- (ii) Travel and lodging expenses are excluded.
- (iii) Meals not included in the registration cost are excluded.

(B) **COUNSELING SERVICES.**

(i) To be authorized by the Division, the counseling services must:

- (I) Be provided by licensed mental health providers;
- (II) Directly relate to the child's disability, the ability of the primary caregiver to care for the child, and the related impact on the family or couple;

(III) Be short term; and

(IV) Have treatment goals prior approved by the services coordinator.

(ii) Counseling services are excluded for:

(I) Therapy that could be obtained through OHP or other payment mechanisms;

(II) General marriage counseling;

(III) Therapy to address primary caregiver or other family members' psychopathology; or

(IV) Counseling that addresses stressors not directly attributed to the child.

(g) **SPECIALIZED CONSULTATION.** Specialized consultation services are services provided by a physical therapist, occupational therapist, speech and language pathologist, or other professional. Specialized consultation services must have exhausted the limits identified under OHP.

(h) **SPECIALIZED DIETS.** A specialized diet is in addition to meals a primary caregiver would provide and specific to a child's medical condition or diagnosis. Specialized diet services include registered dietician services. A specialized diet must be ordered by a physician and monitored at least annually and as necessary by a dietician. The Division shall not authorize food that constitutes a full nutritional regime.

(i) **OTHER.** The Division shall authorize other goods, services, and supplies for payment if:

- (A) Directly related to the child's disability;
- (B) Included in an approved Plan of Care;
- (C) Needed to maintain the health and safety of the child;
- (D) Cost effective;
- (E) Not typical for a parent to provide a child of the same age; and

(F) Required to help the primary caregiver to continue to meet the needs of caring for the child.

(j) Goods, services, and supplies paid for by the Division must be documented by receipts or invoices. The receipts or invoices shall be maintained by the Division for five years. If no receipt or invoice is available, the primary caregiver must submit to the Division in writing, a statement that the primary caregiver received the goods, services, or supplies, and the date the goods, services, or supplies were received.

(6) The Division may expend its funds through contract, purchase order, use of credit card, payment directly to the vendor, or any other legal payment mechanism.

(7) MFC services for a child not on the Hospital Model Waiver are limited to IHDC services only.

(8) All MFC services authorized by the Division must be included in a written Plan of Care in order to be eligible for payment.

(9) The Plan of Care must use the most cost effective services for safely meeting the child's needs as determined by the services coordinator.

(10) **SERVICE LEVELS.** The Division shall base the average monthly service budget for the MFC services authorized in the Plan of Care on the child's service level as follows:

(a) **Level I.**

(A) A child who is eligible for level I services must:

(i) Be ventilator-dependent for 20 or more hours per day;

(ii) Have a score on the clinical criteria of 75 or greater; and

(iii) Require that the provider or primary caregiver be awake for the full 24 hours.

(B) A child must be ventilator-dependent 24 hours per day for the maximum service budget to be allowed.

(b) **Level II.**

(A) A child who is eligible for level II services must:

(i) Be ventilator-dependent for 14 to 20 hours per day;

(ii) Have a score on the clinical criteria between 70 and 74; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent 20 hours per day for the maximum service budget to be allowed.

(c) **Level III.**

(A) A child who is eligible for level III services must:

(i) Be ventilator-dependent for 6 to 13 hours per day;

(ii) Have a score on the clinical criteria between 65 and 69; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent 13 hours per day for the maximum service budget to be allowed.

(d) **Level IV.**

(A) A child who is eligible for level IV services must:

(i) Be ventilator-dependent for up to six hours per day;

(ii) Have a score on the clinical criteria between 60 and 64; and

(iii) Require the provider or primary caregiver to remain awake for the full 24 hours.

(B) A child must be ventilator-dependent six hours per day for the maximum budget to be allowed.

(e) **Level V.** A child who is eligible for level V services must:

(A) Have a score on the clinical criteria between 50 and 59; and

(B) Require close proximity of the provider or primary caregiver to monitor for the full 24 hours.

(f) **Level VI.** A child who is eligible for level VI services must:

(A) Have a score on the clinical criteria less than 50;

(B) Meet the other eligibility criteria in OAR 411-350-0030; and

(C) Not have been transitioned out of MFC services.

(11) **EXCEPTIONS.** Exceptions, not to exceed 60 consecutive days without MFCU Supervisor review and approval, shall only be authorized by the Division in the following circumstances:

(a) To prevent the child's hospitalization.

(b) To provide initial teaching of new care needs.

(c) A significant medical condition or event occurs that prevents or seriously impedes the primary caregiver from providing services as documented by a physician.

(12) The Division shall only authorize MFC services to enable the primary caregiver to meet the needs of caring for the child. All MFC services funded by the Division must be based on actual and customary costs related to best practice standards of care for children with similar disabilities.

(13) When multiple children in the same family home or setting qualify for MFC services, the same primary caregiver must provide services to

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all qualified children if services may be safely delivered by a single primary caregiver, as determined by the services coordinator.

(14) The Division shall not pay for MFC services that are:

- (a) Notwithstanding abuse as defined in ORS 419B.005, abusive, aversive, or demeaning;
- (b) Experimental;
- (c) Illegal, including crimes identified in OAR 407-007-0275;
- (d) Determined unsafe for the general public by recognized child and consumer safety agencies;
- (e) Not necessary or cost effective;
- (f) Educational services for school-age children, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills;
- (g) Services or activities that the legislative or executive branch of Oregon government has prohibited use of public funds;

(h) Medical treatments; or

(i) Services or supplies provided by private health insurance or OHP.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0140, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-350-0080

Standards for Providers

(1) A provider must:

(a) Be at least 18 years of age.

(b) Maintain a drug-free work place.

(c) Provide evidence satisfactory to the Division that demonstrates by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the IHDC services authorized.

(d) Consent to and pass a criminal records check by the Department as described in OAR 407-007-0200 to 407-007-0370, and be free of convictions or founded allegations of abuse by the appropriate agency including but not limited to the Department.

(A) The Department shall perform criminal records rechecks biannually, or as needed, if a report of a criminal activity has been received.

(B) PORTABILITY OF CRIMINAL RECORDS CHECK APPROVAL. Any person meeting the definition of subject individual as defined in OAR 407-007-0200 to 407-007-0370 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0200 to 407-007-0370. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes.

(e) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(f) Not be a parent, step parent, foster provider, or legal guardian of the child.

(g) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any IHDC services.

(2) Section (1)(e) of this rule does not apply to employees of parents or employees of billing providers who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or its designee within 24 hours.

(4) A provider who is providing IHDC services as a nurse must have:

(a) A current Oregon nursing license; and

(b) Be in good standing with appropriate professional associations and boards.

(5) A provider is not an employee of the Department or the state of Oregon and is not eligible for state benefits and immunities, including but not limited to, Public Employees' Retirement System or other state benefit programs.

(6) If the provider or billing provider is an independent contractor during the terms of the contract, the provider or billing provider must maintain in force, at the providers own expense, professional liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(a) The provider or billing provider must provide written evidence of insurance coverage to the Division prior to beginning work.

(b) There must be no cancellation of insurance coverage without 30 days written notice to the Division.

(7) If the provider is an employee of the parent, the provider must submit to the Division documentation of immigration status required by federal statute. The Division shall maintain documentation of immigration status required by federal statute, as a service to the parent who is the employer.

(8) A billing provider that wishes to enroll with the Division must maintain and submit evidence upon initial application and upon request by the Division of the following:

(a) Current, valid, non-restricted Oregon nurses' licenses for each employee who is providing services as a nurse;

(b) Current criminal records checks on each employee who provides services in a family home that shows the employee has no disqualifying criminal convictions, including crimes as described in OAR 407-007-0275;

(c) Professional liability insurance that meets the requirements of section (6) of this rule; and

(d) Any licensure required of the agency by the state of Oregon or federal law or regulation.

(9) A provider must immediately notify the parent and the Division 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 service required by the child for whom services are being provided.

(10) Providers are mandatory reporters and are required to report suspected child abuse to their local Department office or to the police in the manner described in ORS 419B.010.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0170, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-350-0110

Payment for MFC Services

(1) Services budgets shall be individually negotiated by the Division, based on the individual needs of the child.

(2) Effective July 28, 2009, public 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.

(3) Section (2) of this rule does not apply to employees of a parent or billing provider who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(4) Authorization must be obtained prior to the delivery of any MFC services for those services to be eligible for reimbursement.

(5) Providers must request payment authorization for MFC services provided during an unforeseeable emergency on the first business day following the emergency service. The services coordinator shall determine if the service is eligible for payment.

(6) The delivery of authorized MFC services must occur so that any individual employee of the parent does not exceed 40 hours per work week. The Division shall not authorize services that require the payment of overtime, without prior written authorization by the MFCU Supervisor.

(7) The Division shall make payment for MFC services, described in OAR 411-350-0050, after services are delivered as authorized and required documentation is received by the services coordinator.

(8) The Division shall make payment to the individual employee of the parent on behalf of the parent. The following shall be ancillary contributions:

(a) The Division shall pay the employer's share of the Federal Insurance Contributions Act tax (FICA) and withhold the employee's share of FICA as a service to the parent as the provider's employer.

(b) The Division shall cover real and actual costs to the Employment Department, in lieu of the parent as the provider's employer.

(9) Holidays are paid at the same rate as non-holidays.

(10) Travel time to reach the job site is not reimbursable.

(11) In order to be eligible for payment, requests for payments must be submitted to the Division within six months of the delivery of MFC services.

(12) Payment by the Division for MFC services is considered full payment for the services rendered under Title XIX or Title XXI. Under no circumstances may the provider or billing provider demand or receive additional payment for these services from the parent or any other source.

(13) Medicaid funds are the payer of last resort. The provider or billing provider must bill all third party resources until all third party resources are exhausted.

(14) The Division reserves the right to make a claim against any third party payer before or after making payment to the provider of MFC services.

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(15) The Division may void without cause prior authorizations that have been issued in the event of any of the following:

(a) Change in the status of the child. Examples include but are not limited to hospitalization, improvement in health status, or death of the child;

(b) Decision of the parent to change providers;

(c) Inadequate services, inadequate documentation, or failure to perform other expected duties;

(d) Documentation of a person who is subject to criminal records checks on or after July 28, 2009, as required by administrative rule, and who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275; or

(e) Any situation, as determined by the services coordinator that puts the child's health or safety at risk.

(16) Section (15)(d) of this rule does not apply to employees of parents or billing providers who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(17) Upon submission of the billing form for payment, the provider must comply with:

(a) All rules in OAR chapter 411;

(b) 45 CFR Part 84 that implements Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(18) All billings must be for MFC services provided within the provider's licensure.

(19) The provider must submit true and accurate information on the billing form. Use of a billing provider does not replace the provider's responsibility for the truth and accuracy of submitted information.

(20) No person shall submit to the Division:

(a) A false billing form for payment;

(b) A billing form for payment that has been or is expected to be paid by another source; or

(c) Any billing form for MFC services that have not been provided.

(21) The Division shall only make payment to the enrolled provider who actually performs the MFC services or the provider's enrolled billing provider. Federal regulations prohibit the Division from making payment to collection agencies.

(22) Payments may be denied if any provisions of these rules are not complied with.

(23) The Division shall recoup all overpayments. The amount to be recovered:

(a) Is the entire amount determined or agreed to by the Division;

(b) Is not limited to the amount determined by criminal or civil proceedings; and

(c) Includes interest to be charged at allowable state rates.

(24) The Division shall deliver to the provider, by registered or certified mail, or in person, a request for repayment of the overpayment or notification of recoupment of future payments.

(25) Payment schedules with the interest may be negotiated at the discretion of the Division.

(26) If recoupment is sought from a parent whose child received MFC services, hearing rights in OAR 411-350-0118 apply.

(27) Payment for services provided to more than one child in the same setting at the same time shall not exceed the maximum hourly rate for one child without prior written authorization by the MFCU Supervisor.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0200, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-350-0120

Sanctions for MFC Providers

(1) Sanctions may be imposed on a provider when any of the following conditions is determined by the Division to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or issuance of a provider number;

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited, or surrendered;

(d) The provider has failed to safely provide the MFC services authorized as determined by the parent or the services coordinator;

(e) The provider has had a founded report of child abuse or substantiated abuse;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime, founded report of child abuse, or substantiated abuse;

(i) The provider has falsified required documentation;

(j) The provider has been suspended or terminated as a provider by another division within the Department; or

(k) The provider has not adhered to the provisions of these rules.

(2) The Division may impose the following sanctions on a provider:

(a) Termination from providing MFC services;

(b) Suspension from providing MFC services for a specified length of time or until specified conditions for reinstatement are met and approved by the Division; or

(c) Payments to the provider may be withheld.

(3) If the Division makes a decision to sanction a provider, the provider must be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the Assistant Director of the Division.

(b) For an appeal to be valid, written notice of the appeal must be received by the Division within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of the Division, providers who have previously been terminated or suspended by any division within the Department may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0210, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-355-0010

Definitions

(1) "Abuse" means abuse of a child as defined in ORS 419B.005.

(2) "Activities of Daily Living (ADL)" mean activities usually performed in the course of a normal day in a child's life such as eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior (play and social development).

(3) "Assistant Director" means the assistant director of the Division, or that person's designee.

(4) "Behavior Consultant" means a contractor with specialized skills who meets the requirements of OAR 411-355-0050(2) and provides the services described in OAR 411-355-0040(2).

(5) "Billing Form" means the document generated by the Division that acts as a prior authorization, contract, and payment mechanism for services.

(6) "Billing Provider" means an organization that enrolls and contracts with the Division to provide services through its employees and bills the Division for the provider's services.

(7) "Child" means an individual who is under the age of 18 and eligible for the Medically Involved Children's Program.

(8) "CMS" means Centers for Medicare and Medicaid Services, the federal agency charged with delivery and oversight of all Medicare and Medicaid services.

(9) "Cost Effective" means that in the opinion of the services coordinator, a specific service meets the child's service needs and costs less than, or is comparable to, other service options considered.

(10) "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 the registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(11) "Department" means the Department of Human Services (DHS).

(12) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism,

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cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the conditions must be manifested before the age of 18;

(b) Originates in and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(13) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(14) "Family Home" means the residence of the child that is not a foster home, group home, or other residential service funded with public funds.

(15) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(16) "Grievance" means a process by which a person may air complaints and seek remedies.

(17) "In-Home Daily Care (IHDC)" means essential supportive daily care delivered by a qualified provider that enables a child to remain, or return to, the family home.

(18) "Mandatory Reporter" means any public or private official who comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(19) "Medically Involved Children's Program (MICP)" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children living in their family home who otherwise would have to be served in a nursing facility if the waiver program was not available.

(20) "Medically Involved Criteria (Form DHS-0521)" means the assessment tool used by the Division to evaluate the intensity of the challenges presented by children eligible for the Medically Involved Children's Program.

(21) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN) pursuant to ORS chapter 678.

(22) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of a child, and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught, assigned, or delegated to the qualified provider or parent. When a Nursing Care Plan exists, it becomes a part of the Plan of Care.

(23) "Nursing Facility (NF)" means a residential medical facility.

(24) "Nursing Tasks or Services" means the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks or services may be delegated.

(25) "OHP" means the Oregon Health Plan.

(26) "Parent" means biological parent, adoptive parent, or legal guardian.

(27) "Plan of Care (POC)" means a written document developed by the services coordinator and the parent that describes the individual needs of the child, the needs and resources of the family that impact the child, and how those individual needs shall be met with family and public resources. The Plan of Care includes the Nursing Care Plan when one exists.

(28) "Primary Caregiver" means the parent, relative, or other non-paid parental figure that provides the direct care of the child at the times that a paid provider is not available.

(29) "Provider or Performing Provider" means an individual who meets the requirements of OAR 411-355-0050 that is qualified to receive payment from the Division for in-home daily care. Providers work directly with children. Providers may be employees of billing providers, employees of the parent, or independent contractors.

(30) "Respite" means intermittent services provided on a periodic basis for the relief of, or due to the temporary absence of, the primary caregiver.

(31) "Service Budget" means the monthly dollar amount allotted for the care of the child based on a medically involved criteria level of care determination. The service budget consists of in-home daily care and, if the child is on a waiver, waived services.

(32) "Services Coordinator" means an employee of the Division who ensures a child's eligibility for the Medically Involved Children's Program and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

(33) "Specialized Diet" means specially prepared or particular types of food needed to sustain a child in the family home.

(34) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(35) "Supplant" means take the place of.

(36) "These Rules" mean the rules in OAR chapter 411, division 355.

(37) "Volunteer" means any person providing services without pay to individuals receiving Medically Involved Children's Program services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-355-0040

Scope and Limitations of MICP Services

(1) To be authorized and eligible for payment by the Division, all MICP supports and services must be:

- (a) Directly related to the child's disability;
- (b) Required to maintain the health and safety of the child;
- (c) Cost effective;
- (d) Considered not typical for a parent to provide a child of the same age;

(e) Required to help the parent to continue to meet the needs of caring for the child; and

(f) Included in an approved plan of care.

(2) MICP services may include a combination of the following waived and non-waived services based upon the needs of the child as determined by the services coordinator and as consistent with the child's Plan of Care:

- (a) In-home daily care;
- (b) Respite;
- (c) Specialized medical equipment and supplies;
- (d) Motor vehicle adaptations;
- (e) Environmental accessibility adaptations;
- (f) Homemaker and chore;
- (g) Physical, occupational, and speech and language therapy;
- (h) Non-medical transportation;
- (i) Family training;
- (j) Translation;
- (k) Special diets; or
- (l) Specialized consultation (behavior and nursing delegation).

(3) The annual average service budget, as authorized by the Division in the Plan of Care, dated from the initial Plan of Care to the anniversary date, must not exceed the allowed maximum service budget amount. Service budgets increase or decrease in direct relationship to the increasing or decreasing medically involved criteria score.

(4) Ninety day exceptions shall only be authorized by the Division in the following circumstances:

- (a) The child is at immediate risk of loss of the family home without the expenditure;
- (b) The expenditure provides supports for emerging or changing care needs; or

(c) A significant medical condition or event occurs that prevents the primary caregiver from providing care or services as documented by a physician.

(5) The Division shall evaluate exceptions beyond 90 days on an individual basis using the criteria in section (4) of this rule

(6) The Division shall not pay for MICP services that are:

- (a) Notwithstanding abuse as defined in ORS 419B.005, abusive, aversive, or demeaning;
- (b) Experimental;
- (c) Illegal, including crimes identified in OAR 407-007-0275;
- (d) Determined unsafe for the general public by recognized child and consumer safety agencies;

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(e) Not necessary or cost effective;
(f) Educational services for school-age children, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills; or

(g) Services or activities that the legislative or executive branch of Oregon government has prohibited use of public funds.

(7) When multiple children in the same family home or setting qualify for MICP services, the same provider must provide services to all qualified children if services may be safely delivered by a single provider, as determined by the services coordinator.

(8) **IN-HOME DAILY CARE.** In-home daily care services include a combination of direct provider support assistance with ADLs, nursing services, or other supportive services provided by qualified providers and agencies. The extent of the services may vary, but the extent of service is limited as described in this rule.

(a) The Division shall only authorize in-home daily care service hours that support a parent in their primary caregiving role.

(b) In-home daily care services provided by qualified providers or agencies include:

(A) Basic personal hygiene - Assistance with bathing and grooming;

(B) Toileting, bowel, and bladder care - Assistance in the bathroom, diapering, external cleansing of perineal area, and care of catheters;

(C) Mobility - Transfers, comfort, positioning, and assistance with range of motion exercises;

(D) Nutrition - Special diets, monitoring intake and output, and feeding;

(E) Skin care - Dressing changes;

(F) Supervision - Providing an environment that is safe and meaningful for the child, interacting with the child to prevent danger to the child and others, and assisting the child with appropriate leisure activities;

(G) Communication - Assisting the child in communicating, using any means used by the child;

(H) Neurological - Monitoring of seizures, administering medication, and observing status; and

(I) Other personal care tasks or services.

(c) When any of the in-home daily care services listed in section (8)(b) of this rule are essential to the health and welfare of the child, the provider may provide the following supportive services:

(A) Housekeeping tasks necessary to maintain a healthy and safe environment for the child;

(B) Arranging for necessary medical equipment, supplies, or medications;

(C) Arranging for necessary medical appointments;

(D) Accompanying the child to appointments, outings, or community-based activities; or

(E) Participating in activities with the child to enhance development.

(d) In-home daily care service hours may be spread throughout the time authorized in the billing form or used in large blocks of time as the parent determines.

(e) In-home daily care services must:

(A) Be previously authorized by the Division before services begin;

(B) Be based on the assessed service needs of the child consistent with, and documented in, the Plan of Care as determined by the services coordinator;

(C) Be delivered through the most cost effective method as determined by the services coordinator; and

(D) Include a physician's order when nursing services are to be provided. The Division determines whether payment of nursing services, or the hours of in-home daily care services as ordered by the physician, shall be authorized for payment according to these rules.

(f) In-home daily care services exclude:

(A) Hours that supplant the natural supports and services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow a parent to work or attend school; and

(C) The authorization of hours or level of care not supported by the assessed service needs of the child as documented in the Plan of Care.

(9) **RESPIRE.** Respite services are provided to a child on a periodic or intermittent basis furnished because of the temporary absence of, or need for relief of, the primary caregiver. Respite includes both day and overnight care and may be provided in the family home, qualified provider's home, or qualified facility.

(a) The Division may authorize the following types of qualified providers to provide respite care:

(A) Individual respite provider;

(B) Licensed day care center;

(C) Group home;

(D) Foster home; or

(E) Disability-related or therapeutic recreational camp.

(b) The Division shall not authorize respite services:

(A) Solely to allow primary caregivers to attend school or work;

(B) On more than a periodic schedule;

(C) For more than 56 days in a calendar year;

(D) For more than 14 consecutive days in a calendar month;

(E) For more than 10 days per individual plan year when provided at a specialized camp; or

(F) To pay for room and board if provided at a licensed site or specialized camp.

(10) **SPECIALIZED EQUIPMENT AND SUPPLIES.** Specialized equipment and supplies include the purchase of devices, aids, controls, supplies, or appliances that are necessary to enable a child to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live.

(a) Specialized equipment and supplies may include:

(A) Communication devices;

(B) Adaptive clothing;

(C) Adaptive eating equipment;

(D) Adaptive sensory or habilitation devices or supplies;

(E) Incontinent supplies; or

(F) Increased utility costs associated with medically necessary equipment and procedures.

(b) If a professional is required to assess, identify, adapt, or fit the specialized equipment, the Division shall include the cost in the purchase price of the equipment.

(c) To be authorized by the Division, specialized equipment and supplies must:

(A) Be in addition to any medical equipment and supplies furnished under OHP;

(B) Be determined necessary to the daily functions of the child; and

(C) Be directly related to the child's disability.

(d) Specialized equipment and supplies exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child;

(B) Specialized medical equipment and supplies intended to supplant similar items furnished under OHP;

(C) Items available through family, community, or other governmental resources; and

(D) Items that are considered unsafe for the child.

(11) **MOTOR VEHICLE ADAPTATIONS.** Motor vehicle adaptations are physical adaptations to a vehicle that are necessary to meet the unique needs of the child and ensure the health, welfare, and safety of the child.

(a) The Division shall only authorize motor vehicle adaptations for the primary vehicle used by the child. The motor vehicle adaptations must be cost effective and directly relate to the child's disability.

(b) Motor vehicle adaptations do not include general repair or maintenance and upkeep required by a motor vehicle.

(12) **ENVIRONMENTAL ACCESSIBILITY ADAPTATIONS.** Environmental accessibility adaptations are physical adaptations to a family home that are necessary to ensure the health, welfare, and safety of the child in the family home, or that are necessary to enable the child to function with greater independence around the family home and in family activities. Environmental accessibility adaptations also include an environmental modification consultation to evaluate the family home and make plans to modify the family home to ensure the health, welfare, and safety of the child.

(a) The Division shall authorize environmental accessibility adaptations when:

(A) Related to the child's disability;

(B) Determined to be the most cost effective solution;

(C) Provided in accordance with applicable state or local building codes by licensed contractors. Any modification that impedes egress shall be approved only if a risk assessment demonstrates no safer solution and a safety plan is signed by the parent; and

(D) Authorized in writing by the owner of a rental structure prior to initiation of the work. This does not preclude any reasonable accommodation required under the Americans with Disabilities Act.

(b) For environmental accessibility adaptations that, singly or together, exceed \$5,000, the Division may protect its interest for the entire amount of the adaptations through liens or other legally available means.

(c) Environmental accessibility adaptations exclude:

ADMINISTRATIVE RULES

(A) 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

(B) Adaptations that add to the total square footage of the family home.

(13) **HOMEMAKER AND CHORE.** Homemaker and chore services are services that are required to maintain the family home in a clean, sanitary, and safe environment. Homemaker services include general house-keeping activities while chore services consist of heavy household chores including washing floors, windows, and walls.

(a) The Division shall authorize homemaker and chore services:

(A) When the individual regularly responsible for these activities is temporarily absent or unable to manage the family home and care for him or herself or others in the family home; or

(B) To allow the primary caregiver more time to care for the child enrolled in the MICP.

(b) Homemaker services may not exceed 24 hours per month.

(c) Chore services are considered one-time or intermittent services that are not available on a routine basis.

(d) Homemaker and chore services must be prior authorized by the services coordinator after agreement to scope of work, hours, and cost.

(14) **PHYSICAL THERAPY, OCCUPATIONAL THERAPY, AND SPEECH AND LANGUAGE THERAPY.** Physical, occupational, and speech and language therapy are services provided in the family home or clinic setting by a physical therapist, occupational therapist, or speech and language pathologist as defined under OAR 410-120-0000 except that the amount and duration specified in the State Medicaid Plan do not apply. Physical, occupational, and speech and language therapy services are provided as an extension to state plan services and include interventions and treatments that are commonly accepted practice.

(a) To be authorized by the Division, the physical, occupational, and speech and language therapy services must:

(A) Have exhausted the limits identified under OHP and private insurance;

(B) Be denied by OHP for additional treatments;

(C) Be assessed by the professional, services coordinator, and physician concluding that the child would benefit by continued services;

(D) Include medical doctor orders and a therapist's treatment plan with the authorization request;

(E) Identify the number of services provided in the plan year until OHP or private insurance renew; and

(F) Be reviewed by the services coordinator.

(b) The following physical, occupational, and speech and language therapy services are excluded:

(A) Services and treatments that supplant those provided under OHP or other resources;

(B) Services and treatments that are not commonly accepted practice;

(C) Services and treatments offered by a non-licensed professional; and

(D) Services that are not defined under the approved State Medicaid Plan.

(15) **NON-MEDICAL TRANSPORTATION.** Non-medical transportation for children served by the MICP includes transportation provided in order to enable a child to gain access to MICP and other community services, activities, and resources as specified in the Plan of Care.

(a) Whenever possible, family, neighbors, friends, or community agencies that may provide non-medical transportation service to the child without charge must be utilized.

(b) Authorization of non-medical transportation in the Plan of Care must identify the parameters and limits of non-medical transportation service for each child.

(c) Non-medical transportation service for the child must be provided through the most cost effective means identified and may be purchased through local commercial transportation or mileage reimbursement to a qualified provider.

(d) Non-medical transportation services are provided for the child and the child must always be present.

(e) Non-medical transportation excludes:

(A) Transportation to and from school and medical appointments;

(B) Transportation provided by parents, guardians, or legally responsible adults;

(C) Transportation typically provided by parents for children of similar age without disabilities; and

(D) Mileage reimbursement in excess of the published federal rate at http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC.

(16) **FAMILY TRAINING.** Family training services include:

(a) Training and counseling services that increase the parent's capability to care for and maintain the child in the family home.

(b) Disability related resource materials including books, DVD, and other media.

(A) To be authorized by the Division, the materials must relate to the child's specific disability.

(B) Resource materials shall not be authorized by the Division when determined by the services coordinator to be available for loan from other available resources such as local, state, or specialty libraries.

(c) Conferences, workshop registrations, and group trainings that offer information, education, training, and materials about the child's disability, medical, and health conditions.

(A) The Division shall authorize conference, workshop, or group training that:

(i) Directly relates to the child's disability; and

(ii) Increase the knowledge and skills of the parent to care for and maintain the child in the family home.

(B) The Division shall not authorize conference, workshop, or group trainings costs for:

(i) Travel and lodging expenses;

(ii) Meals not included in the registration cost;

(iii) Services otherwise provided under OHP or available through other resources; or

(iv) Individual family members who are employed to care for the child.

(d) Counseling services that assist the parent with the stresses of having a child with a disability.

(A) To be authorized by the Division, the counseling services must:

(i) Be provided by licensed providers;

(ii) Directly relate to the child's disability and the ability of the parent to care for the child;

(iii) Be short term; and

(iv) Have treatment goals prior approved by the services coordinator.

(B) Counseling services are excluded for:

(i) Therapy that could be obtained through OHP or other payment mechanisms;

(ii) Marriage therapy;

(iii) Therapy to address parent or other family members' psychopathology; and

(iv) Counseling that addresses stressors not directly attributed to the child eligible for the MICP.

(17) **SPECIALIZED DIET.** A specialized diet is in addition to meals a parent would provide and specific to a child's medical condition or diagnosis. A specialized diet includes specially prepared food, or purchase of particular types of food, needed to sustain a child in the family home. Specialized diet services include the purchase of registered dietician services.

(a) In order for a specialized diet to be authorized by the Division:

(A) The diet must be ordered by a physician licensed by the Oregon Board of Medical Examiners;

(B) The diet must be periodically monitored by a dietician; and

(C) The foods must be on the approved list developed by the Division;

(b) The maximum monthly purchase for specialized diet supplies must not exceed \$100 per month.

(c) The Division shall not authorize:

(A) Special diets and dietician services otherwise available under OHP or other sources;

(B) Restaurant and prepared foods;

(C) Vitamins; and

(D) Food that constitutes a full nutritional regime.

(18) **TRANSLATION.**

(a) Translation service includes the services of a translator or interpreter required for a monolingual provider. Translation service is provided solely for the purpose of safely implementing the plan of care between parent, child, and provider for those MICP services delivered within the family home. The purpose of translation services is to establish and maintain the same understanding of the child's care requirements between the private providers and the families who must work together to implement the Plan of Care.

(b) The Division shall not authorize translation services for administrative purposes or services available through Medicaid.

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(19) NURSING DELEGATION. Nursing delegation is the purchase of individualized consultation from a registered nurse in order to delegate tasks of nursing care in select situations. Tasks of nursing care are those procedures that require nursing education and licensure of a nurse to perform.

(a) The Division requires nursing delegation for unlicensed providers paid by the Division when a child requires tasks of nursing care.

(b) Nursing delegation may only occur after a registered nurse has:

(A) Assessed the child and the ability of the provider to perform a specific task;

(B) Taught the task to the provider;

(C) Documented the task in the Nursing Care Plan; and

(D) Ensured on-going assessment of the child and re-evaluation and supervision of the provider.

(c) Nursing delegation consultation must include:

(A) An assessment of the child that determines the child's condition is stable and predictable.

(B) An assessment of the provider that determines the ability of the provider to understand the task and safely perform the task without direct nursing supervision. The task shall not be delegated if, in the judgment of the registered nurse, the provider is unable to understand or perform the task in a safe and accurate manner.

(C) Provision of initial direction by teaching the task of nursing care to the provider, including:

(i) The proper procedure and technique;

(ii) Why the task of nursing care is necessary;

(iii) The risks associated with the task;

(iv) Anticipated side effects;

(v) The appropriate response to risks or side effects;

(vi) Observation of the child's response;

(vii) Documentation of the task of nursing care; and

(viii) Observation of the provider performing the task to ensure the task is performed safely and accurately.

(D) Written instructions regarding the task including:

(i) A step by step outline of how the task is to be performed;

(ii) Signs and symptoms to be observed;

(iii) Guidelines for what to do if signs and symptoms occur;

(iv) Instruction to the provider that the task is specific to the child and is not transferable to other children nor may it be taught to other providers by the delegated provider; and

(v) Determination and documentation of the need and time frame for the next assessment and supervisory visit that may be frequent until the delegation is complete.

(I) The initial return assessment and supervisory visit must be made within 60 days from the initial date of the delegation.

(II) Subsequent visits must be no greater than every 180 days.

(20) BEHAVIOR CONSULTATION. Behavior consultation is the purchase of individualized consultation provided in the family home, only as needed, to respond to a specific problem or behavior identified by the parent and the service coordinator.

(a) Behavior consultation shall only be authorized to support a parent in their caregiving role, not as an educational service.

(b) Behavior consultants must:

(A) Work with the parent to identify:

(i) Areas of a child's family home life that are of most concern for the parent and child;

(ii) The formal or informal responses the parent or provider has used in those areas; and

(iii) The unique characteristics of the parent that could influence the responses that would 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 parent and 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 parent and provider to the early warning signs.

(i) Positive, preventive interventions must be emphasized.

(ii) The least intrusive intervention possible 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 parent.

(D) Develop emergency and crisis procedures to be used to keep the child, parent, and provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-adversive interventions must be utilized. The Division shall not pay a provider to use physical restraints on a child receiving MICP services.

(E) Develop a written Behavior Support Plan that includes the following:

(i) Use of clear, concrete language that is understandable to the parent and provider; and

(ii) Describes the assessment, strategies, and procedures to be used.

(F) Teach the provider and parent the strategies and procedures to be used.

(G) Monitor and revise the Behavior Support Plan as needed.

(21) GOODS, SERVICES, AND SUPPLIES.

(a) Goods, services, and supplies paid for by the Division must be documented by receipts. The receipts must be maintained by the Division for five years. If no receipt is available, the parent must submit to the Division in writing, a statement that the parent received the goods, services, or supplies, and the date the goods, services, or supplies were received.

(b) The Division may protect its interest through any legally allowable means for any good, service, or supply.

(c) The Division may expend its funds through contract, purchase order, use of credit card, payment directly to the vendor, or any other legal payment mechanism.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-355-0050

Standards for Providers Paid with MICP Funds

(1) PROVIDER QUALIFICATIONS.

(a) Each provider who is paid as a contractor, a self-employed individual, or an employee of the parent to provide homemaker and chore, in-home daily care, respite, transportation, family training, occupational therapy, physical therapy, speech and language therapy, dietician, nursing delegation, or specialized supports must:

(A) Be at least 18 years of age.

(B) Maintain a drug-free work place.

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

(D) Not be on the current CMS list of excluded or debarred providers (<http://exclusions.oig.hhs.gov/>).

(E) Not be a parent, step parent, or legal guardian of the child.

(F) Consent to and pass a criminal records check by the Department as described in OAR 407-007-0200 to 407-007-0370 and be free of convictions or founded allegations of abuse by the appropriate agency, including but not limited to the Department, prior to enrolling as a provider.

(i) Criminal records rechecks must be performed biannually, or as needed, if a report of criminal activity has been received by the Department.

(ii) PORTABILITY OF CRIMINAL RECORDS CHECK APPROVAL. Any person meeting the definition of subject individual as defined in OAR 407-007-0200 to 407-007-0370 may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0200 to 407-007-0370. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes.

(G) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(H) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any in-home daily care services.

(I) Provide evidence satisfactory to the Division that demonstrates, by background, education, references, skills, and abilities, the provider is capable of safely and adequately providing the services authorized. The evidence must be confirmed in writing by the parent and include:

ADMINISTRATIVE RULES

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

(ii) Responsibility, maturity, exercising sound judgment, and reputable character;

(iii) Ability to communicate with the child;

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child being cared for;

(v) Current, valid, and unrestricted appropriate professional license or certification where care and supervision requires specific professional education, training, and skill;

(vi) Understanding requirements of maintaining confidentiality and safeguarding the child's information; and

(vii) If providing transportation, a valid driver's license and proof of insurance, as well as other license or certification that may be required under state and local law depending on the nature and scope of the transportation service.

(b) Section (1)(a)(G) of this rule does not apply to employees of parents or employees of billing providers who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) 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 designee within 24 hours.

(d) A provider is not an employee of the Department or the state of Oregon and is not eligible for state benefits and immunities, including but not limited to, Public Employees' Retirement System or other state benefit programs.

(e) If the provider or billing provider is an independent contractor, during the terms of the contract, the provider or billing provider must maintain in force at the providers own expense, professional liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider or billing provider must provide written evidence of insurance coverage to the Division prior to beginning work.

(B) There must be no cancellation of insurance coverage without 30 days written notice to the Division.

(f) If the provider is an employee of the parent, the provider must submit to the Division documentation of immigration status required by federal statute. The Division maintains documentation of immigration status required by federal statute, as a service to the parent who is the employer.

(g) A provider must immediately notify the parent and, if appropriate, the Division, 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 service required by the child for whom MICP services are being provided.

(h) Providers are mandatory reporters and are required to report suspected child abuse to the police or their local Department office in the manner described in ORS 419B.010.

(2) BEHAVIOR CONSULTANTS. Behavior consultants providing specialized consultations must:

(a) Have education, skills, and abilities necessary to provide behavior consultation services as outlined in OAR 411-355-0040 including knowledge and experience in developing plans based on positive behavioral theory and practice;

(b) Have current certification demonstrating completion of Level II training in Oregon Intervention Systems; and

(c) Submit a resume to the Division 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 with developmental disabilities who present difficult or dangerous behaviors; or

(B) Three years experience with individuals with developmental disabilities who present difficult or dangerous behaviors and at least one year of that experience must include providing the services of a behavior consultant as outlined OAR 411-355-0040.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-355-0040.

(3) NURSES. Nurses providing direct care or delegation services must:

(a) Have a current Oregon nursing license; and

(b) Submit a resume to the Division 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 with developmental disabilities.

(4) ENVIRONMENTAL MODIFICATION CONSULTANTS. Environmental modification consultants must be licensed general contractors and have experience evaluating homes, assessing individual needs, and developing cost effective plans that make the home safe and accessible for the child.

(5) ENVIRONMENTAL ACCESSIBILITY ADAPTATION PROVIDERS. Environmental accessibility adaptation providers must be building contractors licensed as applicable under either OAR chapter 812, Construction Contractor's Board, or OAR chapter 808, Landscape Contractors Board.

(6) FAMILY TRAINING PROVIDERS. Providers of family training must be:

(a) Psychologists licensed under ORS 675.030;

(b) Clinical social workers licensed under ORS 675.530;

(c) Licensed professional counselors licensed under ORS 675.715; or

(d) Medical professionals licensed under ORS 677.100.

(7) DIETICIANS. Dieticians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 417.345, 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-355-0060

Standards for Provider Organizations Paid by SPD

(1) A provider organization may not require additional certification to provide respite, community inclusion, or emergent services if they are licensed or certified as:

(a) Twenty-four hour residential programs under OAR chapter 411, division 325;

(b) Foster homes for children with developmental disabilities under OAR chapter 411, division 346;

(c) Child care centers under OAR chapter 414, division 300; or

(d) Organizational camps under OAR chapter 333, division 030.

(2) Provider organizations licensed or certified as described in section (1) of this rule may be considered sufficient demonstration of ability to:

(a) Recruit, hire, supervise, and train qualified staff;

(b) Provide services according to a Plan of Care; and

(c) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(3) A provider organization that wishes to enroll with the MICP must maintain and submit evidence upon initial application and upon request by the Division the following:

(a) Current criminal records checks on each employee who shall be providing services in a family home showing that the employee has no disqualifying criminal convictions, including crimes identified in OAR 407-007-0275;

(b) Professional liability insurance that meets the requirements of OAR 411-355-0050; and

(c) Any licensure required of the agency by the state of Oregon or federal law or regulation.

(4) Provider organizations must assure that all individuals directed by the provider organization as employees, contractors, or volunteers to provide services paid for with MICP funds meet standards for qualification of providers outlined in OAR 411-355-0050.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-355-0090

Payment for MICP Services

(1) The Division shall make payment for MICP services, described in OAR 411-355-0040, after services are delivered as authorized and required documentation is received by the services coordinator.

(2) Effective July 28, 2009, public 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.

(3) Section (2) of this rule does not apply to employees of a parent or billing provider who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

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(4) Service budgets shall be individually negotiated by the Division, based on the individual needs of the child.

(5) Authorization must be obtained prior to the delivery of any MICP services for those services to be eligible for payment.

(6) Providers must request payment authorization for MICP services provided during an unforeseeable emergency on the first business day following the emergency service. The services coordinator must determine if the service is eligible for payment.

(7) The Division shall make payment to the individual employee of the parent on behalf of the parent. The Division shall pay the employer's share of the Federal Insurance Contributions Act (FICA) and withhold the employee's share of FICA as a service to the parent as the provider's employer.

(8) The delivery of authorized MICP services must occur so that any individual employee of the parent does not exceed 40 hours per work week. The Division shall not authorize services that require the payment of overtime, without prior written authorization by the supervisor of children's intensive in-home services.

(9) The Division shall not pay for any hours of MICP services provided by a provider beyond 16 hours in any 24-hour period unless the hours are part of a 24-hour service budget negotiated by the Division and there is evidence the child may be safely served with a 24-hour service budget. Exceptions require written authorization by the supervisor of children's intensive in-home services.

(10) Holidays are paid at the same rate as non-holidays.

(11) Travel time to reach the job site is not reimbursable.

(12) In order to be eligible for payment, requests for payments must be submitted to the Division within three months of the delivery of MICP services.

(13) Payment by the Division for MICP services is considered full payment for the services rendered under Title XIX. Under no circumstances may the provider or billing provider demand or receive additional payment for these services from the parent or any other source.

(14) Medicaid funds are the payor of last resort. The provider or billing provider must bill all third party resources until all third party resources are exhausted.

(15) The Division reserves the right to make a claim against any third party payer before or after making payment to the provider of MICP services.

(16) The Division may void without cause prior authorizations that have been issued.

(17) Upon submission of the billing form for payment, the provider must comply with:

(a) All rules in OAR chapter 411;

(b) Title V, Section 504 of the Rehabilitation Act of 1973;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(18) All billings must be for MICP services provided within the provider's licensure.

(19) The provider must submit true and accurate information on the billing form. Use of a billing provider does not replace the provider's responsibility for the truth and accuracy of submitted information.

(20) No individual shall submit to the Division:

(a) A false billing form for payment;

(b) A billing form for payment that has been or is expected to be paid by another source; or

(c) Any billing form for MICP services that have not been provided.

(21) The Division shall only make payment to the enrolled provider who actually performs the MICP services or the provider's enrolled billing provider. Federal regulations prohibit the Division from making payment to collection agencies.

(22) Payments may be denied if any provisions of these rules are not complied with.

(23) The Division shall recoup all overpayments. The amount to be recovered:

(a) Is the entire amount determined or agreed to by the Division;

(b) Is not limited to the amount determined by criminal or civil proceedings; and

(c) Includes interest to be charged at allowable state rates.

(24) The Division shall deliver to the provider, by registered or certified mail, or in person, a request for repayment of the overpayment or notification of recoupment of future payments.

(25) Payment schedules with the interest may be negotiated at the discretion of the Division.

(26) If recoupment is sought from a parent whose child received MICP services, hearing rights in OAR 411-355-0110 apply.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

411-355-0120

Sanctions for MICP Providers

(1) Sanctions may be imposed on a provider when any of the following conditions is determined by the Division to have occurred:

(a) The provider has been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or issuance of a provider number;

(b) The provider has been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) The provider's license has been suspended, revoked, otherwise limited, or surrendered;

(d) The provider has failed to safely and adequately provide the MICP services authorized as determined by the parent or the services coordinator;

(e) The provider has had a founded report of child abuse or substantiated abuse;

(f) The provider has failed to cooperate with any investigation or grant access to or furnish, as requested, records or documentation;

(g) The provider has billed excessive or fraudulent charges or has been convicted of fraud;

(h) The provider has made a false statement concerning conviction of crime or substantiation of abuse;

(i) The provider has falsified required documentation;

(j) The provider has not adhered to the provisions of these rules; or

(k) The provider has been suspended or terminated as a provider by another division within the Department.

(2) The Division may impose the following sanctions on a provider:

(a) Termination from participation in the MICP;

(b) Suspension from participation in the MICP for a specified length of time or until specified conditions for reinstatement are met and approved by the Division; or

(c) Payments to the provider may be withheld.

(3) If the Division makes a decision to sanction a provider, the provider must be notified by mail of the intent to sanction.

(a) The provider may appeal a sanction by requesting an administrative review by the Assistant Director of the Division.

(b) For an appeal to be valid, written notice of the appeal must be received by the Division within 45 days of the date the sanction notice was mailed to the provider.

(c) The provider must appeal a sanction separately from any appeal of audit findings and overpayments.

(4) At the discretion of the Division, providers who have previously been terminated or suspended by any division within the Department may not be re-enrolled as providers of Medicaid services.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef. 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10

Rule Caption: Developmental Disability Services Eligibility.

Adm. Order No.: SPD 6-2010(Temp)

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Notice Publication Date:

Rules Amended: 411-320-0020, 411-320-0080, 411-320-0175

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending OAR 411-320-0020, OAR 411-320-0080, and OAR 411-320-0175 to:

- Remove the community developmental disability program (CDDP) internal review process for developmental disability eligibility;

- Remove the SPD administrative review process for developmental disability eligibility;

- Remove the definition of an administrative review as it relates to an eligibility determination; and

- Amend the contested case hearing process.

Rules Coordinator: Christina Hartman—(503) 945-6398

ADMINISTRATIVE RULES

411-320-0020

Definitions

(1) "24-Hour Residential Program" means a comprehensive residential home or facility licensed by the Division under ORS 443.410 to provide residential care and training to individuals with developmental disabilities.

(2) "Abuse" means:

(a) Abuse of a child:

(A) As defined in ORS 419B.005; and

(B) Abuse as defined in OAR 407-045-0260, when a child resides in:

(i) Homes or facilities licensed to provide 24-hour residential services for children with developmental disabilities; or

(ii) Agencies licensed or certified by the Division to provide proctor foster care for children with developmental disabilities.

(b) Abuse of an adult as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event.

(5) "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 a standardized test administered by a psychologist, 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 developmental disabilities.

(b) "Significant impairment" in adaptive behavior means a composite score of at least two standard deviations below the norm or two or more areas of functioning that are at least two standard deviations below the norm including but not limited to communication, mobility, self-care, socialization, self-direction, functional academics, or self-sufficiency as indicated on a standardized adaptive test.

(6) "Administrative Review" means the formal process that is used by the Division when an individual or an individual's representative is not satisfied with the decision made by the community developmental disability program or support services brokerage about a complaint involving the provision of services or a service provider.

(7) "Adult" means an individual 18 years or older with developmental disabilities.

(8) "Advocate" means a person other than paid staff who has been selected by the individual, or by the individual's legal representative, 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) "Annual Plan" means:

(a) A written summary the services coordinator completes for an individual 18 years or older who is not receiving support services or comprehensive services; or

(b) The written details of the supports, activities, costs, and resources required for a child receiving family support services.

(10) "Assistant Director" means the assistant director of the Division, or that person's designee.

(11) "Care" means 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. The term "care" is synonymous with "services".

(12) "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.

(13) "Child" means an individual under the age of 18 that has a provisional determination of developmental disability.

(14) "Choice" means the individual's expression of preference, opportunity for, and active role 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 verbally, through sign language, or by other communication methods.

(15) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for

individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(16) "Community Mental Health and Developmental Disability Program (CMHDDP)" means an entity that operates or contracts for all services for individuals with mental or emotional disturbances, drug abuse problems, developmental disabilities, and alcoholism and alcohol abuse problems under the county financial assistance contract with the Department.

(17) "Complaint" means a verbal or written expression of dissatisfaction with services or service providers.

(18) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(19) "Comprehensive Services" mean a package of developmental disability services and supports that include one of the following living arrangements regulated by the Division alone or in combination with any associated employment or community inclusion program regulated by the Division:

(a) Twenty-four hour residential services including but not limited to services provided in a group home, foster home, or through a supported living program; or

(b) In-home supports provided to an adult in the individual or family home costing more than the individual cost limit for support services.

(c) Comprehensive services do not include support services for adults enrolled in support services brokerages or for children enrolled in long-term supports for children or children's intensive in-home services.

(20) "County of Origin" means the individual's county of residence, unless a minor, then county of origin means the county where the jurisdiction of the child's guardianship exists.

(21) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(22) "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.

(23) "Crisis Plan" means the community developmental disability program or regional crisis diversion program generated document, serving as the justification for, and the authorization of crisis supports and expenditures pertaining to an individual receiving crisis services provided under these rules.

(24) "Current Documentation" means documentation relating to an individual's developmental disability in regards to the individual's functioning within the last three years. Current documentation may include but is not limited to annual plans, behavior support plans, educational records, medical assessments related to the developmental disability, psychological evaluations, and adaptive behavior assessments.

(25) "Department" means the Department of Human Services (DHS).

(26) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(27) "DHS Quality Management Strategy" means the Department's Quality Assurance Plan that includes the quality assurance strategies for the Division (http://www.oregon.gov/DHS/spd/qa/app_h_qa.pdf).

(28) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(29) "Eligibility Determination" means a decision by a community developmental disability program or by the Division regarding a person's

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eligibility 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.

(30) "Eligibility Specialist" means an employee of the community developmental disability program or other agency that contracts with the county or Division to determine developmental disability eligibility.

(31) "Entry" means admission to a Division-funded developmental disability service provider.

(32) "Exit" means either termination from a Division-funded developmental disability service provider or transfer from one Division-funded program to another. Exit does not mean transfer within a service provider's program within a county.

(33) "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.

(34) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(35) "Guardian" means a parent for individuals under 18 years of age, or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(36) "Health Care Provider" means a 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.

(37) "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.

(38) "Hearing" means the formal process following an action that would terminate, suspend, reduce, or deny a service. This is a formal process required by federal law (42 CFR 431.200-250). A hearing is also known as a Medicaid Fair Hearing, Contested Case Hearing, and Administrative Hearing.

(39) "Home" means an individual's primary residence that is not under contract with the Department to provide services to an individual as a licensed or certified foster home, residential care facility, assisted living facility, nursing facility, or other residential support program site.

(40) "Imminent Risk" means:

(a) An adult who is in crisis and shall be civilly court-committed to the Department under ORS 427.215 to 427.306 within 60 days without the use of crisis diversion services; or

(b) A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.

(41) "Incident Report" means a written report of any unusual incident involving an individual.

(42) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(43) "Individual" means an adult or a child with developmental disabilities for whom services are planned and provided.

(44) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(45) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's plan of care for Medicaid purposes.

(46) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the Individual Support Plan or requested by the individual.

(47) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and foster contact with persons in their community.

(48) "Intellectual Functioning" means functioning as assessed by a qualified professional using one or more individually administered general intelligence tests.

(49) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for an individual, or a person or agency authorized by the court to make decisions about services for the individual.

(50) "Local Mental Health Authority (LMHA)" means:

(a) The county court or board of county commissioners of one or more counties that operate a community mental health and developmental disability program;

(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 community mental health and developmental disability program; or

(d) The advisory committee for the community developmental disability program covering a geographic service area when managed by the Division.

(51) "Majority Agreement" means for the purpose of entry, exit, transfer, and annual Individual Support Plan team meetings, that no one member of the Individual Support Plan team has the authority to make decisions for the team unless so authorized by the team process. Service providers, families, community developmental disability programs, advocacy agencies, or individuals are considered as one member of the Individual Support Plan team for the purpose of reaching majority agreement.

(52) "Management Entity" means the community developmental disability program or private corporation that operates the regional crisis diversion program, including acting as the fiscal agent for regional crisis diversion funds and resources.

(53) "Mandatory Reporter" means any public or private official who:

(a) Comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(b) While acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(54) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

(55) "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.

(56) "Mental Retardation" means significantly sub-average general intellectual functioning defined as intelligence quotient's (IQ's) under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior that are manifested during the developmental period, prior to 18 years of age. Individuals of borderline intelligence, IQ's 70-75, may be considered to have mental retardation if there is also significant impairment of adaptive behavior as diagnosed and measured by a qualified professional. The adaptive behavior must be directly related to the issues of mental retardation. Definitions and classifications must be consistent with the "Manual of Terminology and Classification in Mental Retardation" by the American Association on Mental Deficiency, 1977 Revision.

(a) Mild mental retardation is used to describe the degree of retardation when intelligence test scores are 50 to 69. Individuals with IQ's in the 70 to 75 range may be considered as having mental retardation if there is significant impairment in adaptive behavior.

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(b) Moderate mental retardation is used to describe the degree of retardation when intelligence test scores are 35 to 49.

(c) Severe mental retardation is used to describe the degree of retardation when intelligence test scores are 20 to 34.

(d) Profound mental retardation is used to describe the degree of retardation when intelligence test scores are below 20.

(57) "Monitoring" means the periodic review of the implementation of services identified in the Individual Support Plan or annual summary, and the quality of services delivered by other organizations.

(58) "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.

(59) "OIT" means the Department of Human Services, Office of Investigations and Training.

(60) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(61) "Physical Restraint" means any manual physical holding of, or contact with an individual that restricts the individual's freedom of movement.

(62) "Physician" means a person licensed under ORS chapter 677 to practice medicine and surgery.

(63) "Physician Assistant" means a person licensed under ORS 677.505 to 677.525.

(64) "Plan of Care" means a written document developed for each individual by the support team using a person-centered approach that describes the supports, services, and resources provided or accessed to address the needs of the individual.

(65) "Productivity" means:

(a) Engagement in income-producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status, or job advancement; or

(b) Engagement by an individual with developmental disabilities in work contributing to a household or community.

(66) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(67) "Psychologist" means:

(a) A person possessing a doctorate degree in psychology from an accredited program with course work in human growth and development, tests, and measurement; or

(b) A state certified school psychologist.

(68) "Psychotropic Medication" means 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.

(69) "Qualified Professional" means a:

(a) Licensed clinical psychologist (Ph.D., Psy.D.) or school psychologist;

(b) Medical doctor (MD); or

(c) Doctor of osteopathy (DO).

(70) "Region" means a group of Oregon counties defined by the Division that have a designated management entity to coordinate regional crisis and backup services and be the recipient and administration of funds for those services.

(71) "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 shall be delivered more effectively or automatically on a regional basis.

(72) "Respite" means short-term care and supervision provided to an individual on a periodic or intermittent basis because of the temporary absence of, or need for relief of, the primary care giver.

(73) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(74) "Review" means a request for reconsideration of a decision made by a service provider, community developmental disability program, support services brokerage, or the Division.

(75) "Service Element" means a funding stream to fund program or services including but not limited to foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive services, or family support.

(76) "Service Provider" means a public or private community agency or organization that provides recognized mental health or developmental disability services and is approved by the Division, or other appropriate agency, to provide these services. The term "provider" or "program" is synonymous with "service provider."

(77) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Division, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities. The term "case manager" is synonymous with "services coordinator".

(78) "State Training Center" means the Eastern Oregon Training Center.

(79) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(80) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is flexible and subject to change with time and circumstances.

(81) "Support Services Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with developmental disabilities.

(82) "Support Team" means a group, composed of members as determined by an individual receiving services or the individual's legal guardian, that participates in the development of the individual's plan of care.

(83) "These Rules" mean the rules in OAR chapter 411, division 320.

(84) "Transfer" means movement of an individual from a service site to another service site within a county, administered by the same service provider that has not been addressed within the Individual Support Plan.

(85) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan is developed and approved by the Individual Support Plan team. The transition plan 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 the Individual Support Plan development.

(86) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring abuse investigation.

(87) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Division, upon written application by the community developmental disability program.

(88) "Volunteer" means any person providing services without pay to individuals receiving case management services.

Stat. Auth.: ORS 409.050, 410.070, 430.640

Stats. Implemented: ORS 427.005, 427.007, 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

411-320-0080

Diagnosis and Eligibility Determination

(1) ELIGIBILITY SPECIALIST. Each CDDP must identify at least one qualified eligibility specialist who has met performance qualifications and training expectations for determining developmental disability eligibility according to OAR 411-320-0030 that shall act as a designee of the Division in regards to making determinations of eligibility.

(2) QUALIFIED PROFESSIONAL DIAGNOSIS. For the purpose of this rule, diagnosis and evaluation information must be completed by professionals qualified to make a diagnosis of developmental disabilities in accordance with the American Association on Mental Deficiency, 1977.

(3) ELIGIBILITY FOR MENTAL RETARDATION.

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(a) A history demonstrating mental retardation must be in place by the individual's 18th birth date. Diagnosing mental retardation is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests administered by a qualified professional as described in section (2) of this rule.

(A) Mental retardation is defined as IQ's under 70 with significant impairment in adaptive behavior directly related to mental retardation. Individuals with an IQ pattern of 70 to 75 with significant impairment to adaptive behavior as defined in OAR 411-320-0020 directly related to the issues of mental retardation may be considered as having mental retardation.

(B) For individuals who have a consistent pattern of IQ results of 65 and under, no adaptive behavior assessment as, described in section (10) of this rule, may be needed if current documentation continues to support eligibility.

(C) Verification of mental retardation for individuals with IQ patterns of 66-75 require an adaptive behavior assessment as described in section (10) of this rule indicating significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(b) Eligibility for mental retardation must include all historical information and requires documentation of significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(A) The adaptive impairments cannot be primarily attributed to mental or emotional disorders, sensory impairments, substance abuse, personality, disorder, learning disability, or ADHD.

(B) The condition or impairment must be expected to last indefinitely.

(4) ELIGIBILITY FOR OTHER DEVELOPMENTAL DISABILITIES.

(a) A history of a developmental disability other than mental retardation must be in place prior to the individual's 22nd birth date. IQ scores are not used in verifying the presence of a non-mental retardation developmental disability. Diagnosing a developmental disability requires a medical or clinical diagnosis of a developmental disability with significant impairment in adaptive behavior, as defined in OAR 411-320-0020, related to the diagnosis.

(A) The disability must have originated in and directly affect the brain; and

(B) The individual must require supports similar to those required by individuals with mental retardation.

(b) Eligibility for developmental disabilities must include all historical information and requires documentation of significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(A) The adaptive impairments must be primarily related to the developmental disability and cannot be primarily attributed to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(B) The condition or impairment must be expected to last indefinitely.

(5) ELIGIBILITY FOR CHILDREN 5 YEARS OF AGE OR YOUNGER. Eligibility for children 5 years of age or younger is always provisional. This means eligibility may change in the future when new information is obtained. Eligibility documentation for children 5 years of age or younger must be no more than three years old and must include:

(a) Standardized testing that demonstrates at least two standard deviations below the norm in two or more of the following areas including but not limited to:

- (A) Self-care;
- (B) Receptive and expressive language;
- (C) Learning;
- (D) Mobility; and
- (E) Self-direction; OR

(b) A medical statement by a licensed medical practitioner of a neurological condition or syndrome that originates in and directly affects the brain and causes or is likely to cause significant impairment in at least two or more of the following areas:

- (A) Self-care;
- (B) Receptive and expressive language;
- (C) Learning;
- (D) Mobility; and
- (E) Self-direction.

(c) The condition or syndrome must not be primarily attributed to mental or emotional disorders, sensory impairments, substance abuse, personality disorder, learning disability, or ADHD.

(d) The condition or impairment must be expected to last indefinitely.

(6) ELIGIBILITY FOR CHILDREN 6 YEARS OF AGE AND OLDER. Eligibility for children 6 years of age and older is always provisional. This means eligibility may change in the future when new information is obtained. Eligibility documentation for children 6 years of age and older must be based on school age documents that are no more than three years old and must include:

(a) Documentation of mental retardation as described in section (3) of this rule; or

(b) A diagnosis and documentation of a developmental disability as described in section (4) of this rule

(7) ELIGIBILITY FOR ADULTS. Eligibility determination for individuals under 21 years of age must be based on information no more than three years old. Eligibility determination for individuals 21 years of age or older must be based on information obtained after the individual's 17th birth date. At or after age 18, adult evaluation instruments must be used to determine eligibility for adults. Eligibility for adults must include:

(a) Documentation of mental retardation as described in section (3) of this rule; or

(b) A diagnosis and documentation of a developmental disability as described in section (4) of this rule.

(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 individual's adaptive functioning may be impacted by the identified condition must be obtained in order to determine if the individual's need for support is directly related to a developmental disability and not primarily related to a head trauma, significant mental or emotional disorder, or substance abuse.

(9) REDETERMINATION OF PROVISIONAL ELIGIBILITY.

(a) The CDDP must notify the individual or the individual's representative that a redetermination of eligibility shall occur within the next 90 calendar days. Notification must be on forms prescribed by the Division.

(b) Eligibility for school age children must be redetermined no later than age 7.

(c) Eligibility for adult services must be redetermined by age 18 for mental retardation and by age 22 for developmental disabilities other than mental retardation.

(d) Eligibility must be redetermined using the criteria established in this rule.

(10) ADAPTIVE BEHAVIOR ASSESSMENT.

(a) For individuals who have a consistent pattern of IQ results of 65 and under, no adaptive behavior assessment may be needed if current documentation continues to support eligibility. However, there may be a need for an adaptive behavior assessment to verify mental retardation if there is an inconsistent IQ pattern, mental or emotional issues, sensory impairments, or substance abuse that may have an effect on cognitive functioning.

(b) IQ patterns of 66-75 require an adaptive behavior assessment indicating significant impairment in adaptive behavior as defined in OAR 411-320-0020.

(c) An informal adaptive behavior assessment may be completed for individuals who have been diagnosed with a developmental disability, who obviously have a significant impairment in adaptive behavior, and who require an adaptive behavior assessment to redetermine eligibility.

(A) A services coordinator or a trained eligibility specialist with at least two years experience working with individuals with developmental disabilities may record their observations of the adaptive behavior impairments in the individual's progress notes.

(B) A standardized measurement of adaptive behavior such as a Vineland Adaptive Behavior Scale or Adaptive Behavior Assessment System may be administered and scored by a psychologist, 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 developmental disabilities.

(11) SECURING EVALUATIONS. In the event that the services coordinator has exhausted all local resources to secure the necessary evaluations for an eligibility determination, the Division shall assist in obtaining additional testing if required to complete the eligibility determination.

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(12) PROCESSING ELIGIBILITY DETERMINATION. The CDDP in the county of origin is responsible for making the eligibility determination.

(a) The CDDP must process eligibility for developmental disability services in the following time frames.

(A) The CDDP must begin the process to determine eligibility within 10 working days after receiving an application for services from an individual or the individual's representative.

(B) The CDDP must begin the process for redetermining eligibility for children within 30 calendar days after notifying the individual or the individual's representative that a redetermination of eligibility must be completed.

(C) The CDDP must make an eligibility determination within 15 working days of receipt of information from which eligibility may be determined.

(D) The CDDP must complete an eligibility determination within 90 calendar days of either receiving the initial application for services, or of notifying the family that a redetermination shall be occurring, except in unusual circumstances, for example:

(i) The CDDP cannot make an eligibility determination because the individual or the individual's representative fails to complete an action;

(ii) There is an emergency beyond the CDDP's control; or

(iii) More time is needed to obtain additional records by the CDDP, the individual, or the individual's representative.

(b) The CDDP must make an eligibility determination unless the following applies and is documented in the individual's progress notes:

(A) The individual or the individual's representative voluntarily withdraws the individual's application;

(B) The individual dies; or

(C) The individual cannot be located.

(c) The process of making an eligibility determination may be extended 90 calendar days by mutual agreement among all parties with written notice sent to the individual or the individual's representative. The CDDP must document the reason for the delay in the individual's record.

(d) The CDDP may not use the time frames established in section (12)(a) of this rule as:

(A) A waiting period before determining eligibility; or

(B) A reason for denying eligibility.

(13) FINANCIAL STATUS. The services coordinator must verify the financial status of individuals during the eligibility or intake process. All sources of income are to be identified. Adults with no unearned income benefits must be referred to Social Security for a determination of financial eligibility. Children or their custodial parent or legal guardian (if not a state agency), must be referred to the appropriate resources if it appears that the child or the child's parent or legal guardian may be eligible for financial assistance.

(14) NOTICE OF ELIGIBILITY DETERMINATION. Within 10 working days of making an eligibility determination or re-determination, the CDDP, based upon a review of the documentation used to determine eligibility, must issue a written notice of the eligibility determination to the individual or the individual's representative. The notice must be on forms prescribed by the Division. The notice must include:

(a) The eligibility determination;

(b) The specific date the notice is mailed or hand delivered;

(c) Notification of the effective date of the action proposed;

(d) The rationale for the eligibility determination, including what reports, documents, or other information that were relied upon in making the eligibility determination;

(e) Notice that the documents relied upon may be reviewed by the individual or the individual's representative;

(f) The specific rules that were used in making the eligibility determination;

(g) Notice that if the individual or the individual's representative disagrees with the Division's eligibility determination, the individual or the individual's representative has the right to request a hearing on the individual's behalf, as provided in ORS chapter 183 and OAR 411-320-0175. Notice must include:

(A) The timeline for requesting a hearing;

(B) Where and how to request a hearing; and

(C) The right to receive assistance from the CDDP in completing and submitting a request for hearing.

(h) Notice of the individual's right to receive continuing services at the same level during the hearing and at the request of the individual including:

(A) Notification of the time frame within which the individual must request continuing services;

(B) Notification of how and where the individual must submit a request for continuing services; and

(C) Notification that an overpayment shall be written for the benefits and the individual may be required to pay back any benefits if the eligibility determination is upheld following a review process or final order.

(15) REQUESTING A HEARING. An individual or an individual's representative may request a hearing as described in OAR 411-320-0175(2) if they disagree with the eligibility decision made by the CDDP. The request for a hearing must be requested within the timeframe identified on the notice of eligibility determination.

(16) CONTINUING SERVICES DURING A HEARING. If an individual is determined no longer eligible following a redetermination of their eligibility, the individual has the right to request continuing services and supports during the hearing process. If the hearing is not in the individual's favor, the individual may be required to pay back any benefits received during the hearing process.

(17) 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. If the receiving county has reason to question the eligibility determination and cannot resolve it between the two CDDPs, the receiving CDDP must promptly refer the matter to the Division for review and consultation of the eligibility determination. The receiving county must continue services for the individual while the review is occurring. The receiving CDDP must complete any eligibility determination activities as required by the Division. If the individual is not eligible for developmental disability services, 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.

Stat. Auth.: ORS 409.050, 410.070, & 430.640

Stats. Implemented: ORS 427.005, 427.007, & 430.610 – 430.670

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

411-320-0175

Hearings for Developmental Disability Services Eligibility Determination

The Department follows the Attorney General's Model Rules OAR 137-003-0501 to 137-003-0700 and ORS 183 for the conduct of hearings in developmental disability eligibility determination.

(1) DEFINITIONS. As used in this rule:

(a) "Administrative Law Judge" means a professional hearing officer, employed by the Employment Division, Office of Administrative Hearings, who presides over hearings and issues a final order.

(b) "Claimant" means a person who has requested a hearing or who is scheduled for a hearing.

(c) "Department Hearing Representative" means a person authorized to represent the Department in the hearing.

(d) "Good Cause" means a circumstance beyond the control of the claimant and claimant's representative.

(e) A "Request for Hearing" is a written request by an individual or an individual's representative that the individual wishes to appeal an eligibility determination.

(2) HEARING REQUESTS. A claimant has the right to a hearing, as provided in ORS chapter 183, if the claimant disagrees with the Department's eligibility determination.

(a) The request for a hearing must be in writing on form DHS 443 and signed by the claimant or the claimant's representative. The signed form (DHS 443) must be received by the Department within 45 days from the date of the Department's notice of eligibility determination.

(b) The CDDP must assist individuals requiring assistance in completing the hearing request form.

(c) A late hearing request may be granted when the claimant has good cause.

(3) REPRESENTATION.

(a) Division employees are authorized to appear as a witness on behalf of the Department for hearings.

(b) Hearings are not open to the public and are closed to non-participants, except non-participants may attend subject to the claimant's consent.

(4) FINAL ORDER.

(a) In a hearing, the administrative law judge is authorized to enter a final order on behalf of the Department without first issuing a proposed order unless the Department has specifically revoked authority.

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(b) A final order shall be issued in compliance with OAR 137-003-0665 or the case otherwise resolved no later than 90 days following the request for hearing.

(c) The final order is effective immediately upon being signed or as otherwise provided in the order.

(d) A petition by a claimant for reconsideration or rehearing must be filed with the entity who issued the final order.

(5) INFORMAL CONFERENCE.

(a) The Department representative and the claimant may have an informal conference, without the presence of the administrative law judge, to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Department and the claimant to settle the matter;

(B) Ensure the claimant understands the reason for the action that is the subject of the hearing request;

(C) Give the claimant an opportunity to review the information that is the basis for the action;

(D) Inform the claimant of the rules that serve as the basis for the contested action;

(E) Give the claimant and the Department the chance to correct any misunderstanding of the facts; and

(F) Give the Department an opportunity to review its action.

(b) The claimant may, at any time prior to the hearing date, request an additional conference with the Department representative. At the Department representative's discretion, the Department representative may grant an additional conference if it facilitates the hearing process.

(c) The Department may provide the claimant the relief sought at any time before the final order is issued.

(6) WITHDRAWAL OF HEARING. A claimant may withdraw a hearing request at any time prior to the issuance of a final order. The withdrawal shall be effective on the date the Department or the Office of Administrative Hearings receives it. The Department shall issue a final order confirming the withdrawal to the last known address of the claimant. The claimant may cancel the withdrawal up to 10 working days following the date the final order is issued.

(7) DISMISSAL FOR FAILURE TO APPEAR. A hearing request is dismissed by order when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Department may cancel the dismissal order on request of the claimant upon a showing that the claimant or the claimant's representative was unable to attend the hearing or unable to request a postponement for reasons beyond the claimant's control.

Stat. Auth.: ORS 409.050, 410.070, 430.640
Stats. Implemented: ORS 427.005, 427.007, 430.610 – 430.670
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

Rule Caption: Foster Homes for Children with Developmental Disabilities.

Adm. Order No.: SPD 7-2010

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Rules Amended: 411-346-0100, 411-346-0110, 411-346-0120, 411-346-0130, 411-346-0140, 411-346-0150, 411-346-0160, 411-346-0165, 411-346-0170, 411-346-0180, 411-346-0190, 411-346-0200, 411-346-0210, 411-346-0220, 411-346-0230

Rules Repealed: 411-346-0110(T), 411-346-0150(T), 411-346-0180(T), 411-346-0220(T)

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently amending the rules in OAR chapter 411, division 346 relating to foster homes for children with developmental disabilities to permanently:

- Implement House Bill 2442 (2009) by changing the definition of abuse for adults with developmental disabilities, adding a requirement to inquire of an applicant if the applicant has been found to have committed abuse, adding a requirement to prohibit the use of public funds for purposes of employment when a person has been convicted of certain crimes, and adding a requirement to prohibit hiring a person when they have been convicted of certain crimes;

• Implement House Bill 3114 (2009) by adding reporting and consent requirements for the administration of more than one psychotropic or any antipsychotic medications to a child in foster care; and

- Add requirements for the development of Emergency Preparedness Plans in response to House Bill 2371 (2007).

Rules Coordinator: Christina Hartman—(503) 945-6398

411-346-0100

Purpose

The rules in OAR chapter 411, division 346 prescribe the standards and procedures for the provision of care and services for children with developmental disabilities in child foster homes certified by the Department of Human Services, Senior and People with Disabilities Division, as a condition for certification and payment.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 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 309-046-0100, 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

411-346-0110

Definitions

(1) "Abuse" means:

(a) Abuse of a child under the age of 18 as defined in ORS 419B.005; and

(b) Abuse of an adult as defined in OAR 407-045-0260 when an individual between the ages of 18 and 21 resides in a certified child foster home.

(2) "Alternate Caregiver" means any person 18 and older responsible for the care or supervision of a child in foster care.

(3) "Alternative Educational Plan (AEP)" 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 the 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 shall live, and is applying for a child foster home certificate or is renewing a child foster home certificate.

(6) "Assistant Director" means the assistant director of the Division, or that person's designee.

(7) "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.

(8) "Behavior Supports" means a positive training plan used by the foster provider and alternate caregivers to help a child in foster care develop the self control and self direction necessary to assume responsibilities, make daily living decisions, and learn to conduct themselves in a manner that is socially acceptable.

(9) "Case Plan" means the goal-oriented, time-limited, individualized plan of action for a child and the child's family developed by the child's family and the Department's Children, Adults, and Families Division for promotion of the child's safety, permanency, and well being.

(10) "Case Worker" means an employee of the Department's Children, Adults, and Families Division.

(11) "Certificate" means a document, issued by the Division that notes approval to operate a child foster home, for a period not to exceed one year.

(12) "Certifier" or "Certifying Agency" means the Division, Community Developmental Disability Program, or an agency approved by the Division who is authorized to gather required documentation to issue or maintain a child foster home certificate.

(13) "Child" means:

(a) An individual under the age of 18 who has a provisional eligibility determination of developmental disability by the Community Developmental Disability Program; or

(b) A young adult age 18 through 21 who is remaining in the same foster home for the purpose of completing their Individualized Education Plan, based on their Individual Support Plan team recommendation and an approved certification variance.

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(14) "Child Foster Home (CFH)" means a home certified by the Division that is maintained and lived in by the person named on the foster home certificate.

(15) "Child Foster Home Contract" means an agreement between a provider and the Department that describes the responsibility of the foster care provider and the Department.

(16) "Child Placing Agency" means the Department, Community Developmental Disability Program, or the Oregon Youth Authority.

(17) "Commercial Basis" means providing and receiving compensation for the temporary care of individuals not identified as members of the household.

(18) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(19) "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.

(20) "Department" means the Department of Human Services (DHS).

(21) "Developmental Disability (DD)" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(22) "DHS-CW" means the child welfare program area within the Department's Children, Adults, and Families Division.

(23) "Direct Nursing Services" means the provision of individual-specific advice, plans, or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home or facility. 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.

(24) "Discipline" for the purpose of these rules, discipline is synonymous with behavior supports.

(25) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(26) "Domestic Animals" mean any various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(27) "Educational Surrogate" means a person who acts in place of a parent in safeguarding a child's rights in the special education decision-making process:

(a) When the parent 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 a parent or adult student.

(28) "Emergency Certificate" means a foster home certificate issued for 30 days.

(29) "Foster Care" means a child is placed away from their parent or guardian in a certified child foster home.

(30) "Foster Provider" means the certified care provider who resides at the address listed on the foster home certificate. For the purpose of these rules, "foster provider" is synonymous with child foster parent or relative caregiver and is considered a private agency for purposes of mandatory reporting of abuse.

(31) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(32) "Guardian" means a parent for individuals less than 18 years of age or a person or agency appointed and authorized by an Oregon court to make decisions about services for an individual in foster care.

(33) "Health Care Provider" means a 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.

(34) "Home Inspection" means an on-site, physical review of the applicant's home to assure the applicant meets all health and safety requirements within these rules.

(35) "Home Study" means the assessment process used for the purpose of determining an applicant's abilities to care for a child in need of foster care placement.

(36) "Incident Report" means a written report of any unusual incident involving the child in foster care.

(37) "Individualized Education Plan (IEP)" means a written plan of instructional goals and objectives in conference with the teacher, parent or guardian, student, and a representative of the school district.

(38) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required to meet the health, safety, financial, and personal goals of the child in foster care. The Individual Support Plan is the child's plan of care for Medicaid purposes.

(39) "Individual Support Plan (ISP) Team" means a team composed of:

(a) The child in foster care when appropriate;

(b) The foster provider;

(c) The guardian;

(d) The Community Developmental Disability Program services coordinator; and

(e) May include family or any other approved persons who are approved by the child and the child's guardian to develop the Individual Support Plan.

(40) "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, the ability to conduct a mental health assessment, and provide psychotropic medication management for a child in foster care.

(41) "Mandatory Reporter" means any public or private official who:

(a) For the purposes of this rule, is a foster provider, staff, or volunteer working with individuals birth to 17 years of age, and comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by the section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(b) For the purposes of this rule, is a foster provider, staff, or volunteer working with individuals 18 years and older, and while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(42) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

(43) "Member of the Household" means any adults and children living in the home, including any employees or volunteers assisting in the care

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provided to a child placed in the home. For the purpose of these rules, a child in foster care is not considered a member of the household.

(44) "Mental Health Assessment" means the determination of a child's need for mental health services by interviewing the child and obtaining all pertinent biopsychosocial information, as identified by the individual, family, and collateral sources that:

(a) Addresses the current complaint or condition presented by the child;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(45) "Misuse of Funds" includes but is not limited to providers or their staff:

(a) Borrowing from or loaning money to a child in foster care;

(b) Witnessing a will in which the provider or a staff is a beneficiary;

(c) Adding the provider's name to an individual's bank account or other titles for personal property without approval of the individual, when of age to give legal consent, or the individual's legal representative and authorization of the Individual Support Plan team;

(d) Inappropriately expending or theft of an individual's personal funds;

(e) Using an individual's personal funds for the provider's or staff's own benefit; or

(f) Commingling an individual's funds with provider or another individual's funds.

(46) "Monitoring" means the observation by the Division, or designee, of a certified child foster home to determine continuing compliance with these rules.

(47) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN).

(48) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught or delegated to the foster provider and alternate caregivers.

(49) "Occupant" means any person having official residence in a certified child foster home.

(50) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. The Oregon Intervention System is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(51) "Oregon Youth Authority (OYA)" means an agency that has been given commitment and supervision responsibilities over those youth offenders, 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.

(52) "Permanent Foster Care" means a long term contractual agreement between the foster parent and the Department's Children, Adults, and Families Division, approved by the juvenile court that specifies the responsibilities and authority of the foster parent and the commitment by the permanent foster parent 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.

(53) "Protected Health Information" means any oral or written health information that identifies the child and relates to the child's past, present, or future physical or mental health condition, health care treatment, or payment for health care treatment.

(54) "Protective Physical Intervention" means:

(a) Any manual physical holding of or contact with a child that restricts the child's freedom of movement; and

(b) The use of any physical action to maintain the health and safety of a child or others during a potentially dangerous situation or event.

(55) "Psychotropic Medication" means 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.

(56) "Qualified Mental Health Professional" means a person who meets both of the following:

(a) Holds at least one of the following educational degrees:

(A) Graduate degree in psychology;

(B) Bachelor's degree in nursing and licensed in Oregon;

(C) Graduate degree in social work;

(D) Graduate degree in a behavioral science field;

(E) Graduate degree in recreational, art, or music therapy;

(F) Bachelor's degree in occupational therapy and licensed in Oregon;

and

(b) Whose education and experience demonstrates the competencies to:

(A) Identify precipitating events;

(B) Gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts;

(C) Assess family, social, and work relationships;

(D) Conduct a mental status examination;

(E) Document a multiaxial DSM diagnosis;

(F) Write and supervise a Treatment Plan;

(G) Conduct a mental health assessment; and

(H) Provide individual, family, or group therapy within the scope of his or her practice.

(57) "Respite" means intermittent services provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of, persons normally providing the supports to individuals unable to care for themselves.

(58) "Revocation" means the action taken by the certifying agency to rescind a child foster home certificate of approval after determining that the child foster home is not in compliance with one or more of these rules.

(59) "Services Coordinator" means an employee of the Community Developmental Disability Program or the Division, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(60) "Significant Medical Needs" means but is not limited to total assistance required for all activities of daily living such as access to food or fluids, daily hygiene which is not attributable to the child's chronological age, and frequent medical interventions required by the care plan for health and safety of the child.

(61) "Specialized Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include but are not limited to low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets.

(62) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(63) "Suspension of Certificate" means a temporary withdrawal of the approval to operate a child foster home after the certifying agency determines that the child foster home is not in compliance with one or more of these rules.

(64) "These Rules" mean the rules in OAR chapter 411, division 346.

(65) "Unauthorized Absence" means any length of time when a child is absent from the foster home without prior approval as specified on the Individual Support Plan.

(66) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(67) "Urgent Medical Need" means the onset of psychiatric symptoms requiring attention within 48 hours to prevent a serious deterioration in a child's mental or physical condition.

(68) "Variance" means a temporary exemption from a regulation or provision of these rules that may be granted by the Division upon written application by the certifying agency.

(69) "Volunteer" means any person assisting in a child foster home without pay to support the care provided to a child placed in the child foster home.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 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

411-346-0120

Certification Required

(1) Any home that meets the definition of a child foster home must be certified by one of the following agencies:

(a) The Division;

(b) DHS-CW; or

(c) The OYA.

(2) A child in foster care shall only be placed in a certified child foster home.

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Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835
Stats. Implemented: ORS 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 309-046-0120, 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

411-346-0130

Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) gives federally recognized Indian tribes the authority to select homes for a child protected by the ICWA. Tribes and Alaskan Native Regional Corporations may license, approve, or specify a foster home for a child protected by the ICWA. The tribe is authorized to decide which of the following three preferences to use, or whether to request that the Division or DHS-CW certify the home. When the tribe requests the Division to certify the home, the Division shall use these rules for certification. Indian children placed in relative homes, whether licensed, certified, or selected by the tribe are eligible for foster care payments when DHS-CW has legal custody. Preference shall be given for placement with:

- (1) A member of the Indian child's extended family;
- (2) A foster home licensed, approved, or specified by the Indian child's tribe; or
- (3) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

Indian licensing authority.

Stat. Auth.: ORS 443.830, 430.215, 409.050 & 410.070
Stats. Implemented: ORS 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 309-046-0130, 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

411-346-0140

Selection

(1) The Division or the CDDP shall recruit foster providers who have the abilities and commitment to carry out the responsibilities set forth in these rules to meet the Division's specific need for homes. The Division shall determine which applicants shall be certified. The CDDP staff shall determine which home is best for a particular child.

(2) The foster provider must be a responsible, stable, emotionally mature adult who exercises sound judgment and has the capacity to meet the mental, physical, and emotional needs of a child placed in foster care.

(3) The foster provider must demonstrate the following traits:

- (a) Capacity to give and receive affection;
- (b) Kindness;
- (c) Flexibility;
- (d) A sense of humor; and
- (e) The ability to deal with frustration and conflict.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835
Stats. Implemented: ORS 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 309-046-0140, 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

411-346-0150

General Requirements for Certification

(1) The applicant or foster provider must participate in certification and certification renewal studies and in the ongoing monitoring of their homes.

(2) The applicant or foster provider must give the information required by the Division to verify compliance with all applicable rules, including change of address and change of number of persons in the household such as relatives, employees, or volunteers.

(3) The applicant seeking certification from the Division must complete the Division application forms. When two or more adults living in the home share foster provider responsibilities to any degree, they must be listed on the application as applicant and co-applicant.

(4) The applicant must disclose each state or territory they have lived in the last five years and for a longer period if requested by the certifier. The disclosure must include the address, city, state, and zip code of previous residences.

(5) Information provided by the applicants must include:

(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. This may include but is not limited to 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 persons, three of whom are unrelated, who have known each applicant for two years or more and who can attest to their character and ability to care for children. The Division may contact schools, employers, adult children, and other sources as references;

(e) Reports of all criminal charges, arrests or convictions, the dates of offenses, and the resolution of those charges for all employees or volunteers and persons living in the home. If the applicant's minor children shall be living in the home, the applicants must also list reports of all criminal or juvenile delinquency charges, arrests or convictions, the dates of offenses, and the resolution of those charges;

(f) Founded reports of child abuse or substantiated abuse, with dates, locations, and resolutions of those reports for all persons 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, whether the obligor is current with payments or in arrears, and whether any applicant's or foster provider's wages are being attached or garnished for any reason;

(j) A physician's statement, on a form provided by the Division, 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 detectors 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 "Indian," as defined in the Indian Child Welfare Act, may be 18 years of age or older, if an Indian child to be placed is in the legal custody of DHS-CW.

(8) Applicants, providers, alternate caregivers, providers' employees or volunteers, other occupants in the home who are 18 years or older, and other adults having regular contact in the home with a child in foster care or any subject individual as described in OAR 407-007-0200 to 407-007-0370 must consent to a criminal records check by the Department, in accordance with OAR 407-007-0200 to 407-007-0370 (Criminal Records Check Rules) and under ORS 181.534. The Division may require a criminal records check on members of the household under 18 if there is reason to believe that a member may pose a risk to a child placed in the home. All persons subject to a criminal records check are required to complete an Oregon criminal records check and a national criminal records check, as described in OAR 407-007-0200 to 407-007-0370, including the use of fingerprint cards.

(a) 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.

(b) 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.

(c) 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.

(d) 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 designee within 24 hours.

(9) The Division may not issue or renew a certificate if an applicant or member of the household:

(a) Has, after completing the criminal records check required by the Division, a fitness determination of "denied."

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(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 criminal records 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) The applicant or foster provider may request to withdraw their application any time during the certification process by notifying the certifier in writing. Written documentation by the certifier of verbal notice may substitute for written notification.

(11) The Division may not issue or renew a certificate for a minimum of five years if the 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. This shall be grounds for suspension and revocation of the certificate.

(12) The Division may not issue or renew a certificate based on an evaluation of any negative references, school reports, physician's statement, 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 employee's position 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 Assistant Director of the Division. The written approval must be on file with the Assistant Director of the Division and in the Division's certification file.

(14) An application is incomplete and void unless all supporting materials are submitted to the Division 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 Division. Within 60 days upon receipt of the completed application, a decision shall be made by the Division to approve or deny certification.

(16) The Division shall determine compliance with these rules 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 is valid for one year unless revoked or suspended earlier.

(17) The Division may attach conditions to the certificate that limit, restrict, or specify other criteria for operation of the child foster home.

(18) A condition may be attached to the certificate that limits the provider to the care of a specific child. No other referrals shall be made to a provider with this limitation.

(19) A child foster home certificate is not transferable or applicable to any location or persons other than those specified on the certificate.

(20) The 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) The 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 the applicant or foster provider intends to provide care for a child with significant medical needs then 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.

- (A) Such as a registered nurse (RN) or licensed practical nurse (LPN);

or

(B) Has 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 could be life-threatening;

(c) Copies of all current health related license 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 applicant's ability and past experiences as a caregiver. The medical professional references serve as two of the four references in section (5)(d) of this rule; and

(f) Positive written recommendation from the Division's Medically Fragile Children's Unit (MFCU) if the provider or applicant has provided services through the program or if the provider or applicant has historically received services through the program for a child in their family home or foster home.

(23) A foster provider may not accept a child with significant medical needs unless an initial care plan addressing the health and safety supports is in place at the time of placement.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 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 309-046-0150, 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

411-346-0160

Renewal of Certificate

(1) At least 90 days prior to the expiration of a certificate, the Division shall send a reminder notice and application for renewal to the currently certified provider. Submittal of a renewal application prior to the expiration date keeps the certificate in effect until the Division takes action. If the renewal application is not submitted prior to the expiration date, the CFH shall be treated as an uncertified home.

(2) The certification renewal process includes the renewal application and the same supporting documentation as required for a new certification. With the discretion of the certifier, a financial statement, physician statement, and floor plan may not be required.

(3) Copies of the services coordinator's monitoring check list or recommendations from the services coordinators who have had children in the home within the last year may be requested at time of certification renewal.

(4) School reports may not be required if the Division or the certifier reasonably assumes this information has not changed or is not necessary.

(5) The Division or the certifier may investigate any information in the renewal application and shall conduct a home inspection.

(6) The provider shall be given a copy of the inspection form documenting any deficiencies and a time frame to correct deficiencies. Deficiencies must be corrected no longer than 60 days from the date of inspection. If documented deficiencies are not corrected within the time frame specified, the renewal application shall be denied.

(7) Applicants, providers, providers' substitute caregivers, employees, volunteers, and any other occupants in the home 18 years of age and older must submit to an Oregon criminal records check and must continue to meet all certification standards as outlined in these rules.

(8) Each foster provider must provide documentation of a minimum of 10 hours of Division approved training per year prior to annual renewal of the certificate. A mutually agreed upon training plan may be part of the re-certification process.

(9) When serving children with significant medical needs, the foster provider must have a minimum of six of the ten hours of annual training requirements in specific medical training beyond First Aid and CPR. The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the children served in the foster home.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 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 309-046-0160, 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

411-346-0165

Emergency Certification

(1) An emergency certificate may be issued by the Division for up to 30 days, provided the following conditions are met:

(a) An Oregon criminal records check indicates no immediate need for fingerprinting for all persons living in the home;

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(b) A DHS-CW background check identifies no founded reports of child abuse committed by persons living in the home;

(c) Applicant has no previous revocations or suspensions of any license or certificate by any issuing agency for a foster home, group home, or any other care or support services;

(d) A review of support enforcement obligations and public assistance cases identifies no substantial financial concerns;

(e) An application and two references are submitted;

(f) An abbreviated home study is done; and

(g) A satisfactory home inspection and a Health and Safety Checklist are completed.

(2) When a child with significant medical needs shall be living in the foster home, the following additional requirements must be met before an emergency certificate may be issued:

(a) Current satisfactory references from at least two medical professionals, such as a physician and registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver; AND

(b) A positive written recommendation from the Division's Medically Fragile Children's Unit (MFCU) if the provider or applicant has provided services through the program or has historically received services through the program for a child in their family home or foster home; AND

(c) Current certification in First Aid and CPR. The CPR training must be done by a recognized training agency and the CPR certificate must be appropriate to the ages of the children served in the foster home; AND

(d) Copies of all current medical related licenses or certificates must be provided to the certifier; AND

(e) Six hours of medical training beyond CPR and First Aid training as appropriate to the ages of the children served in the foster home; OR

(f) Licensed as a registered nurse, licensed practical nurse, emergency medical technician, nurse practitioner, or physician's assistant.

(3) Emergency certificates may be issued if the renewal process is incomplete at the time of annual renewal.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 443.830 & 443.835

Hist.: 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

411-346-0170

Personal Qualifications of the Applicant and Foster Provider

(1) The applicant and foster provider must:

(a) Be responsible, stable, emotionally mature adults who exercise sound judgment;

(b) Have the interest, motivation, and ability to nurture, support, and meet the mental, physical, developmental, and emotional needs of a child placed in the foster home;

(c) Be willing to receive training, and have the ability to learn and use effective child-rearing practices, to enable a child placed in the foster home to grow, develop, and build positive personal relationships and self esteem;

(d) Demonstrate that they have the knowledge and understanding of positive non-punitive discipline and ways of helping a child in foster care build positive personal relationships, self-control, and self esteem;

(e) Respect the child's relationship with his or her parents and siblings and be willing to work in partnership with family members, agencies, and schools involved with the child to attain the goals as listed in the IEP, ISP, and Case Plan;

(f) Respect the child's privacy in accordance with the child's age;

(g) Have supportive ties with others who might support, comfort, and advise them. Supportive ties include but are not limited to:

(A) Family;

(B) Friends;

(C) Neighborhood contacts;

(D) Churches; or

(E) Community groups;

(h) Demonstrate that they have lifestyles and personal habits free from abuse or misuse of alcohol or drugs;

(i) Be at least 21 years of age, unless otherwise specified through ICWA and requirements for placement of Indian children; and

(j) Be able to realistically evaluate which children they may accept, work with, and integrate into their family.

(2) HEALTH QUALIFICATIONS.

(a) The applicant and foster provider must provide the Division with the health history of each member of the household, including physical and mental health services and treatment received. Within one working day, the foster provider must inform the Division if any member of the household has or develops a serious communicable disease or other serious health con-

dition that may affect the provider's ability to care for the child, or may affect the health and safety of the child.

(b) The applicant, foster provider, and other adults in the household caring for a child in foster care must be physically and mentally able to perform the duties of a foster provider as described in these rules.

(c) The applicant, foster provider, and others in the household must be free from abuse or misuse of alcohol or drugs. In the case of alcoholism or substance abuse, the applicant, foster provider, or others in the household must demonstrate that they have been substance-free and sober for at least two years prior to making application for certification.

(d) When requested by the Division either during the application process or while certified, the applicant or foster provider must, at their expense and from a source acceptable to the Division, supply psychological, medical or physical, sex-offender, drug and alcohol, and psychiatric reports and evaluations to the Division.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 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 309-046-0170, 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

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 Division or the certifier 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 Division or the certifier. Such training shall include educational opportunities designed to enhance the foster provider's awareness, understanding, and skills to meet the special needs of a child placed in their home.

(c) The foster provider must complete mandatory reporting 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 certifier 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 respite;

(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 child's CDDP services coordinator and guardian of a child's injury, illness, accidents, or any unusual incidents or circumstances 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 certifier and child placing agency reasonable access to their home and to the child placed in their care. This includes access by family members when placement is voluntary. For the purpose of these rules, reasonable access means with prior notice unless there is cause for not giving such notice;

(h) Allow the Division or certifying agency staff access to:

(A) Investigate reports of abuse, violations of a regulation, or provision of these rules;

(B) Inspect or examine the home, the child's records and accounts, and the physical premises including the buildings, grounds, equipment, and any vehicles; and

(C) Interview the child, adult, or alternate caregivers.

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(i) Participate in interviews conducted by the Division or the certifier; and

(j) Authorize substitute caregivers to permit entrance by the Division or the certifier 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 provider's biological children:

(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) Any child foster home provider contracted by a proctor agency to provide proctor care services shall be limited to serving a total of two children in foster care.

(e) 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 their certification, or if they feel their skill level may not safely or effectively support the child.

(f) A foster provider may provide respite in the provider's home for a child upon approval by the certifier or the Division.

(g) A foster provider must obtain approval from the certifier prior to accepting a child for placement.

(h) A child who turns 18 may continue to reside in their current certified child foster home when it has been determined by the ISP team it is in the best interest of the child to remain in the same home. When it has been determined by the ISP team a child who is turning 18 shall remain in their current certified child foster home the foster provider must:

(A) Submit a variance request to the Division in accordance with OAR 411-346-0210; and

(B) Submit to the Division and the certifier, 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 foster home.

(i) Any variance to sections (3)(a), through (3)(h) of this rule must take into consideration the maximum safe physical capacity of the home including:

(A) Sleeping arrangements;

(B) The ratio of adult to child;

(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.

(j) The foster provider may not care for unrelated adults on a commercial basis in their own home or accept children for day care in their own home while currently certified as a foster provider.

(k) The foster provider may exit a child in foster care by giving 30 days written notice to the designated CDDP staff, except where undue delay shall jeopardize the health, safety, or well-being of the child or others.

(l) The foster provider must notify the Division prior to a voluntary closure of a child foster home, and give the child's guardian 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) RELATIONSHIP WITH THE CHILD'S FAMILY. In accordance with the child's ISP and the guardian, the foster provider must:

(a) Support the child's relationship with the child's family members including siblings;

(b) Assist the CDDP staff and the guardian in planning visits with the child and the child's family members; and

(c) Provide the child reasonable opportunities to communicate with their family members.

(5) CONFIDENTIALITY.

(a) The foster provider and the provider's family must treat personal information about a child or a child's family 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 shall be limited to the health, safety, and service needs of the child.

(b) In addition to the requirements in section (5)(a) of this rule, the foster provider and the provider's family must comply with the provisions of ORS 192.518 to 192.523 and therefore may use or disclose a child's protected health information only:

(A) To law enforcement, certifying agency staff, CDDP staff, and DHS-CW staff;

(B) As authorized by the child's personal representative or guardian 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.

(6) MANDATORY REPORTING.

(a) The foster provider and their employees and volunteers 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, their employees, 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, they 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 by the foster provider. Same day verbal notification is required. The foster provider must notify DHS-CW and the child's CDDP services coordinator.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 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

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 their 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 if applicable as defined in the DHS-CW case plan, encourage the child to participate in community activities with family, friends, and on their own when appropriate.

(d) Promote the child's independence and self-sufficiency by encouraging and assisting the child to develop new skills and perform age-appropriate tasks.

(e) In accordance with the ISP and if applicable as defined in the DHS-CW case plan, ask the child in foster care to participate in household chores appropriate to the child's age and ability that commensurate with those expected of the provider's own children.

(f) Provide the child with reasonable access to a telephone and to writing materials.

(g) In accordance with the ISP and if applicable as defined in the DHS-CW Case Plan, permit and encourage the child to have visits with family and friends.

(h) Allow regular contacts and private visits or phone calls with the child's CDDP services coordinator and if applicable the DHS-CW case worker.

(i) Not allow a child in foster care to baby-sit in the foster home or elsewhere without permission of the child's 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 child's family.

(b) In accordance with the ISP and guardian preferences, 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 provider.

(c) The foster provider may not require a child to participate in religious activities or ethnic events contrary to the child's beliefs.

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(3) 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 child's IEP.

(c) Must be actively involved in the child's school program and must participate in the development of the child's IEP. The foster provider may apply to be the child's educational surrogate if requested by the parent or guardian.

(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 child's educational progress.

(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 Division, 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 Respite Plan approved by the certifier or the Division 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;

(E) Cleared by a criminal records check as described in OAR 411-346-0150(8) including a DHS-CW background check;

(F) Able to communicate with the child, individuals, agencies providing care to the child, CDDP services coordinator, and appropriate others;

(G) Trained on fire safety and emergency procedures;

(H) Trained on the child's ISP, Behavior Support Plan, and any related protocols and able to provide the care needed for the child;

(I) Trained on the required documentation for health, safety, and behavioral needs of the child;

(J) A licensed driver and with vehicle insurance in compliance with the Oregon DMV laws when transporting children by motorized vehicle; and

(K) Not be a person who requires care in a foster care or group home.

(e) When the foster provider uses an alternate caregiver and the child shall be staying at the alternate caregiver's home, the foster provider must assure the alternate caregiver's home 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 shall be responsible and capable of assuming child care responsibilities and be 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 physician or physician assistant.

(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 current guidelines of Oregon State University extension services (<http://extension.oregonstate.edu/fch/food-preservation>).

(c) All food items must be used prior to the item's expiration date.

(d) The foster provider must implement specialized diets only as prescribed in writing by the child's physician or physician assistant.

(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) The foster provider, when serving milk, 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 their 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 child's belongings 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 home.

(7) BEHAVIOR SUPPORT AND DISCIPLINE PRACTICES.

(a) The foster provider must teach and discipline a child with respect, kindness, and understanding, using positive behavior management techniques. 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 child's family that undermine a child's self-respect;

(C) Denial of food, clothing, or shelter;

(D) Denial of visits or contacts with family members, except when otherwise indicated in the ISP or if applicable the DHS-CW case plan;

(E) Assignment of extremely strenuous exercise or work;

(F) Threatened or unauthorized use of physical interventions;

(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 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, it must be included on the child's ISP and the foster provider must provide it in an unlocked, lighted, well-ventilated room of at least 50 square feet. The ISP must include whether the child needs to be within hearing distance or within sight of an adult during the time-out. The time limit must take into consideration the child's chronological age, emotional condition, and developmental level. Time-out is to be used for short duration and frequency as approved by ISP team.

(d) No child in foster care or other child in a foster home shall 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 child's ISP team approved BSP.

(i) When protective physical intervention shall be 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 approval from the OIS Steering Committee in writing prior to their implementation. Documentation of the approval must be maintained in the child's records.

(B) As in a health-related protection prescribed by a physician or qualified health care provider, but only if absolutely necessary during the

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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 an agreement of the ISP team.

(B) The foster provider must maintain the original order in the child's records 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 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 services coordinator and guardian. The foster provider must make verbal 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 child's records.

(E) The incident report must include:

(i) The name of the child to whom the protective physical intervention was applied;

(ii) The date, location, type, and duration of entire incident and protective physical intervention;

(iii) The name of the provider and witnesses or persons 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 child's chronological age, developmental level, and condition of the child, and as identified in the ISP.

(b) Assure that physician or qualified health care provider orders and those of other licensed medical professionals are implemented as written.

(c) Inform the child's 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 child's health status except as otherwise indicated in the DHS-CW Permanent Foster Care contract agreement and as agreed upon in the child's 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 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, or mental health status;

(B) Current orders for all medications, treatments, therapies, use of protective physical intervention, specialized 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 child's legal guardian, services coordinator, and DHS-CW caseworker.

(i) Provide copies, as applicable, of the medical records described in section (8)(g)(H) above to the licensed medical professional prior to the 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 child's file prior to the usage of or implementation of any of the following:

(A) All prescription medications;

(B) Non prescription 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 specialized diets;

(F) Prescribed adaptive equipment; and

(G) Aids to physical functioning.

(b) The foster provider must have:

(A) A copy of an 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 pharmacist prescription or manufacturer's label as specified by the physician's order 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 a physician or a qualified health care provider's authorization.

(d) Each child's medication, including refrigerated medication, must be clearly labeled with the pharmacist's label, or in the manufacturer's originally labeled container, 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 foster home and must be disposed of in a manner that shall prevent illegal diversion into the possession of people other than for which it 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 physician's or licensed health practitioner's order 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 a physician's order;

(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.

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(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 specialized diets must be documented on the MAR when not used or applied according to the order.

(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 child's 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 child's medical record.

(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 medical professional.

(l) Any medication that is used with the intent to alter behavior of a child with a developmental disability must be documented on the ISP.

(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 Division's Balancing Test Form. 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.

(o) A mental health assessment by a qualified mental health professional or licensed medical professional must be completed, except as noted in subsection (A) of this section, 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; or

(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 worker; or

(ii) Shall 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 child's parent when the parent retains legal guardianship;

(B) The child's family member or the person who has legal guardianship; or

(C) DHS-CW when DHS-CW is the legal guardian of the child; and

(D) The CDDP services coordinator.

(q) The notification from the foster provider to the legal 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 or 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 shall cooperate as requested, when a review of psychotropic medications is indicated.

(10) DIRECT NURSING SERVICES.

(a) When direct nursing services are provided to a child the foster provider must:

(A) Coordinate with the nurse and the ISP team to ensure that the services being provided are sufficient to meet the child's health needs; and

(B) Implement the Nursing Care Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(b) When nursing tasks are delegated, they must be delegated by a licensed registered nurse in accordance with OAR chapter 851, division 047.

(11) 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 child's name, date of entry into the foster home, date of birth, gender, religious preference, and guardianship status;

(B) The names, addresses, and telephone numbers of the child's guardian, family, advocate, or other significant person;

(C) The name, address, and telephone number of the child's preferred primary health 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;

(D) The name, address, and telephone number of the child's school program; 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 child's name;

(B) The child's address and telephone number;

(C) The child's physical description which may include a picture and the date it was taken, and identification of:

(i) The child's race, gender, height, weight range, hair and eye color;

and

(ii) Any other identifying characteristics that may assist in identifying the child should the need arise, such as marks or scars, tattoos, or body piercing.

(D) Information on the child's abilities and characteristics 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 could assist a person not familiar with the child to understand what the child can do for him or herself.

(E) The child's health support needs including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person would need 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;

(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 child's ability to communicate, respond for instructions, or follow directions;

(viii) Specialized equipment needed for mobility, positioning, or other health related needs;

(ix) The child's emotional and behavioral support needs 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 child's supervisions requirements and why; and

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(xii) Any additional pertinent information the provider has that may assist in the care and support of the child should a natural or man-made disaster occur.

(c) **EMERGENCY PLANNING.** The foster provider must post emergency telephone numbers in close proximity to all phones utilized by the foster provider or substitute 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 persons 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 provider's and alternative caregiver's responsibilities.

(ii) Consider the needs of the child and address all natural and human-caused events identified as a significant risk for the 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) Alternative caregiver is unable provide respite or additional support and care.

(iv) Include provisions for evacuation and relocation that identifies:

(I) The duties of the alternative caregivers during evacuation, transporting, and housing of the child including instructions to notify the child's parent or legal guardian, the Division or designee, the CDDP services coordinator, and DHS-CW as applicable, of the plan to evacuate or the evacuation of the 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 persons unknown to the child the ability to identify each child by the child's name, and to identify the name of the child's supporting provider; and

(V) A method for tracking and reporting to the Division or the Division's designee 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 alternative caregivers regarding their responsibilities 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 home.

(D) The foster provide must have the Emergency Plan Summary completed by January 1, 2011 on form DHS 0938. The Emergency Plan Summary must be sent to the Division annually with renewal of child foster home certification.

(e) **INDIVIDUAL SUPPORT PLAN (ISP).** Within 60 days of placement, the child's ISP must be prepared by the ISP team and, at a minimum, updated annually.

(A) The foster provider must participate with the ISP team in the development and implementation of the ISP to address each child's behavior, medical, social, financial, safety, and other support needs.

(B) Prior to or upon entry to or exit from the 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 foster home or after care plan; and

(ii) Identify the supports necessary to ensure 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 provider at the beginning of each month;

(iii) The date, amounts, 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 child's personal funds, unless otherwise indicated in the child's ISP, must be documented including receipts in the child's financial record.

(C) The child's ISP team may address how the child's personal spending money shall be managed.

(D) If the child has a separate commercial bank account, records from that account must be maintained with the financial record.

(E) The child's personal funds must be maintained in a safe manner and separate from other members of the household funds.

(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 each child's property 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 child's guardian.

(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 child's report cards;

(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 Division, the certifier, and DHS-CW conducting inspections or investigations, as well as to the child, if appropriate, and the guardian, or other legally authorized persons.

(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 child's new home.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 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

411-346-0200

Environmental Standards

(1) **GENERAL CONDITIONS.**

(a) The buildings and furnishings must be clean and in good repair and grounds must be maintained.

(b) Walls, ceilings, windows, and floors must be of such character to permit frequent washing, cleaning, or painting.

(c) There must be no accumulation of garbage, debris, or rubbish.

(d) The home must have a safe, properly installed, maintained, and operational heating system. Areas of the home used by the child in foster care must be maintained at normal comfort range during the day and during sleeping hours. During times of extreme summer heat, the provider must make reasonable effort to make the child comfortable using available ventilation, fans, or air-conditioning.

(2) **EXTERIOR ENVIRONMENT.**

(a) The premises must be free from objects, materials, and conditions that constitute a danger to the occupants.

ADMINISTRATIVE RULES

(b) Swimming pools, wading pools, ponds, hot tubs, and trampolines must be maintained to assure safety, kept in clean condition, equipped with sufficient safety barriers or devices to prevent injury, and used by a child in foster care only under direct supervision by the provider or approved alternate caregiver.

(c) The home must have a safe outdoor play area on the property or within reasonable walking distance.

(3) INTERIOR ENVIRONMENT.

(a) KITCHEN.

(A) Equipment necessary for the safe preparation, storage, serving, and cleanup of meals must be available and kept in working and sanitary condition.

(B) Meals must be prepared in a safe and sanitary manner that minimizes the possibility of food poisoning or food-borne illness.

(C) If the washer and dryer are located in the kitchen or dining room area, soiled linens and clothing must be stored in containers in an area separate from food and food storage prior to laundering.

(b) DINING AREA. The home must have a dining area so the child in foster care may eat together with the foster family.

(c) LIVING OR FAMILY ROOM. The home must have sufficient living or family room space that is furnished and accessible to all members of the family including the child in foster care.

(d) BEDROOMS. Bedrooms used by the child in foster care must:

(A) Have adequate space for the age, size, and specific needs of each child;

(B) Be finished and attached to the house, have walls or partitions of standard construction that go from floor to ceiling, and have a door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(C) Have windows that open and provide sufficient natural light and ventilation with window coverings provided that take into consideration the safety, care needs, and privacy of the child;

(D) Have no more than four children to a bedroom;

(E) Have safe, age appropriate furnishings that are in good repair, provided for each child including:

(i) A bed or crib with a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, and a water proof mattress cover if the child is incontinent;

(ii) A private dresser or similar storage area for personal belongings that is readily accessible to the child;

(iii) A closet or similar storage area for clothing that is readily accessible to the child; and

(iv) An adequate supply of clean bed linens, blankets, and pillows. Bed linens are to be properly fitting and provided for each child's bed.

(F) Be on the ground level for a child who is non-ambulatory or has impaired mobility;

(G) Provide flexibility in the decoration for the personal tastes and expressions of the child placed in the provider's home;

(H) Be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies, or be equipped with a working monitor;

(I) Have doors that do not lock;

(J) Have no three-tier bunk beds in bedrooms occupied by a child in foster care; and

(K) Not be located on the third floor or higher from the ground level.

(e) A child of the foster provider may not be required to sleep in a room also used for another purpose in order to accommodate a child in foster care.

(f) The foster provider may not permit the following sleeping arrangements for a child placed in their home:

(A) Children of different sexes in the same room when either child is over the age of five years of age; and

(B) Children over the age of 12 months sharing a room with an adult.

(g) BATHROOMS.

(A) Must have tubs or showers, toilets, and sinks operable and in good repair with hot and cold water.

(B) A sink must be located near each toilet.

(C) There must be at least one toilet, one sink, and one tub or shower for each six household occupants including the provider and family.

(D) Must have hot and cold water in sufficient supply to meet the needs of the child for personal hygiene. Hot water temperature sources for bathing and cleaning areas that are accessible by the child in foster care may not exceed 120 degrees F.

(E) Must have grab bars and non-slip floor surfaces for toilets, tubs, or showers for the child's safety as necessary for the child's care needs.

(F) Must have barrier-free access to toilet and bathing facilities with appropriate fixtures for a child who utilizes a wheel chair or other mechanical equipment for ambulation. Barrier free must be appropriate for the non-ambulatory child's needs for maintaining good personal hygiene.

(G) The foster provider must provide each child with the appropriate personal hygiene and grooming items that meet each child's specific needs and minimize the spread of communicable disease.

(H) Window coverings in bathrooms must take into consideration the safety, care needs, and privacy of the child.

(4) GENERAL SAFETY.

(a) The foster provider must protect the child from safety hazards.

(b) Stairways must be equipped with handrails.

(c) A functioning light must be provided in each room and stairway.

(d) In homes with a child in foster care age three or under, or a child with impaired mobility, the stairways must be protected with a gate or door.

(e) Hot water heaters must be equipped with a safety release valve and an overflow pipe that directs water to the floor or to another approved location.

(f) Adequate safeguards must be taken to protect a child who may be at risk for injury from electrical outlets, extension cords, and heat-producing devices.

(g) The foster home must have operable phone service at all times available to all persons in the foster home including when there are power outages. The home must have emergency phone numbers readily accessible and in close proximity to the phone.

(h) The foster provider must store all medications, poisonous chemicals, and cleaning materials in a way that prevents access by a child.

(i) The foster provider must restrict a child's access to potentially dangerous animals. Only domestic animals must be kept as pets. Pets must be properly cared for and supervised.

(j) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of rabies or other vaccinations as required by local ordinances must be made available to the Division upon request.

(k) The foster provider must take appropriate measures to keep the house and premises free of rodents and insects.

(l) To protect the safety of a child in foster care, the provider must store hunting equipment and weapons in a safe and secure manner inaccessible to the child.

(m) The foster provider must have first aid supplies in the home in a designated place easily accessible to adults.

(n) There must be emergency access to any room that has a lock.

(o) An operable flashlight, at least one per floor, must be readily available in case of emergency.

(p) House or mailbox numbers must be clearly visible and easy to read for easy identification by emergency vehicles.

(q) Use of video monitors must only be used as indicated in the ISP or Behavior Support Plan.

(5) FIRE SAFETY.

(a) Smoke detectors must be installed in accordance with manufacturer's instructions, equipped with a device that warns of low battery, and maintained to function properly.

(A) Smoke detectors must be installed in each bedroom, adjacent hallways leading to the bedrooms, common living areas, basements, and at the top of every stairway in multi-story homes.

(B) Ceiling placement of smoke detectors is recommended. If wall-mounted, the smoke detectors must be between 6" and 12" from the ceiling and not within 12" of a corner.

(b) At least one fire extinguisher, minimally rated 2:A:10:B:C, must be visible and readily accessible on each floor, including basements. A qualified professional who is well versed in fire extinguisher maintenance must inspect every fire extinguisher at least once per year. All recharging and hydrostatic testing must be completed by a qualified entity properly trained and equipped for this purpose.

(c) Use of space heaters must be limited to only electric space heaters equipped with tip-over protection. Space heaters must be plugged directly into the wall. No extension cords must be used with such heaters. No free-standing kerosene, propane, or liquid fuel space heaters must be used in the foster home.

(d) An Emergency Evacuation Plan must be developed, posted, and rehearsed at least once every 90 days with at least one drill practice per year occurring during sleeping hours. Alternate caregivers and other staff must be familiar with the emergency evacuation plan and a new child placed in foster care must be familiar with the Emergency Evacuation Plan within 24 hours. Fire drill records must be retained for one year.

ADMINISTRATIVE RULES

(A) Fire drill evacuation rehearsal must document the date, time for full evacuation, location of proposed fire, and names of all persons participating in the evacuation rehearsal.

(B) The foster provider must be able to demonstrate the ability to evacuate all children in foster care from the home within three minutes.

(e) Foster homes must have two unrestricted exits in case of fire. A sliding door or window that may be used to evacuate a child may be considered a usable exit.

(f) Barred windows or doors used for possible exit in case of fire must be fitted with operable quick release mechanisms.

(g) Every bedroom used by a child in foster care must have at least one operable window, of a size that allows safe rescue, with safe and direct exit to the ground, or a door for secondary means of escape or rescue.

(h) All external and inside doors must have simple hardware with an obvious method of operation that allows for safe evacuation from the home. A home with a child that is known to leave their place of residence without permission must have a functional and activated alarm system to alert the foster provider.

(i) Fireplaces and wood stoves must include secure barriers to keep a child safe from potential injury and away from exposed heat sources.

(j) Solid or other fuel-burning appliances, stoves, or fireplaces must be installed according to manufacturer's specifications and under permit, where applicable. All applicants applying for a new child foster home certificate after July 1, 2007 must have at least one carbon monoxide sensor installed in the home in accordance with manufacturer's instructions if the home has solid or other fuel-burning appliances, stoves, or fireplaces. All foster providers certified prior to July 1, 2007 and moving to a new location that uses solid or other fuel-burning appliances, stoves, or fireplaces, must install a carbon monoxide sensor in the home in accordance with manufacturer's instructions prior to being certified at the new location.

(k) Chimneys must be inspected at the time of initial certification and if necessary the chimney must be cleaned. Chimneys must be inspected annually, unless the fireplace and or solid fuel-burning appliance was not used through the year of certification and may not be used in the future.

(l) A signed statement by the foster provider and certifier assuring that the fireplace and or solid fuel-burning appliance may not be in use must be submitted to the Division with the renewal application if a chimney inspection may not be completed.

(m) Flammable and combustible materials must be stored away from any heat source.

(6) SANITATION AND HEALTH.

(a) A public water supply must be utilized if available. If a non-municipal water source is used, it must be tested for coliform bacteria by a certified agent yearly and records must be retained for two years. Corrective action must be taken to ensure potability.

(b) All plumbing must be kept in good working order. If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order.

(c) Garbage and refuse must be suitably stored in readily cleanable, rodent proof, covered containers, and removed weekly.

(d) SMOKING.

(A) The foster provider may not provide tobacco products in any form to a child under the age of 18 placed in their home.

(B) A child in foster care may not be exposed to second hand smoke in the foster home or when being transported.

(7) TRANSPORTATION SAFETY.

(a) The foster provider must ensure that safe transportation is available for children to access schools, recreation, churches, scheduled medical care, community facilities, and urgent care.

(b) If there is not a licensed driver and vehicle at all times there must be a plan for urgent and routine transportation.

(c) The foster provider must maintain all vehicles used to transport a child in a safe operating condition and must ensure that a first aid kit is in each vehicle.

(d) All motor vehicles owned by the foster provider and used for transporting a child must be insured to include liability.

(e) Only licensed adult drivers must transport a child in foster care in a motor vehicle. The motor vehicle must be insured to include liability.

(f) When transporting a child in foster care, the driver must ensure that the child uses seat belts or appropriate safety seats. Car seats or seat belts must be used for transporting a child in accordance with the Department of Transportation under ORS 815.055.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 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 309-046-0200, 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

411-346-0210

Variance

(1) The Division may grant a variance to these rules based upon demonstration by the foster provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, safety, or rights of the child.

(2) The foster provider requesting a variance must submit to the certifier, a Division variance request form 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 a child's services, evidence that the variance is consistent with a currently approved ISP.

(3) The certifier shall forward the signed variance request form to the Division within 30 days of receipt of the request indicating the certifier's position on the proposed variance.

(4) The Assistant Director of the Division may approve or deny the request for a variance.

(5) The Division shall notify the foster provider and the certifier of the decision. The Division shall send this notice within 30 calendar days of receipt of the request with a copy to other relevant Department programs or offices.

(6) Any grievance of a denial for a variance request must be made in writing within 30 days to the Assistant Director of the Division with a copy sent to the certifier. The Assistant Director's decision shall be final.

(7) The Division shall determine the duration of the variance.

(8) Granting a variance does not set a precedent that must be followed by the child placing agency when evaluating subsequent requests for variances.

(9) The foster provider may implement a variance only after written approval from the Division.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 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 309-046-0210, 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 10-2007, f. 6-27-07, cert. ef. 7-5-07; SPD 7-2010, f. 6-29-10, cert. ef. 7-1-10

411-346-0220

Inactive Referral Status; Denial, Suspension, Revocation, Refusal to Renew

(1) INACTIVE REFERRAL STATUS. The Division may require that a foster provider go on inactive referral status. Inactive referral status is a period, not to exceed 12 months or beyond the duration of the foster provider's current certificate, when during that time no agency shall refer additional children to the home and the provider may not accept additional children. The foster provider may request to be placed on inactive referral status. The certifier may recommend that the Division initiate inactive referral status.

(a) The Division may place a foster provider on inactive referral status for reasons including but not limited to the following:

(A) The Division or DHS-CW is currently assessing an allegation of abuse in the home.

(B) The special needs of the child currently in the home require so much of the foster provider's care and attention that additional children may not be placed in the home.

(C) The foster provider has failed to meet individualized training requirements or the Division has asked the foster provider to obtain additional training to enhance his or her skill in caring for the child placed in the home.

(D) The family or members of the household are experiencing significant family or life stress or changes in physical or mental health conditions that may be impairing their ability to provide care. Examples include but are not limited to:

(i) Separation or divorce and relationship conflicts;

(ii) Marriage;

(iii) Death;

(iv) Birth of a child;

(v) Adoption;

(vi) Employment difficulties;

(vii) Relocation;

(viii) Law violation; or

(ix) Significant changes in the care needs of their own family members (children or adults).

(b) The Division shall notify the foster provider immediately upon placing them on inactive referral.

ADMINISTRATIVE RULES

(c) Within 30 days of initiating inactive referral status, the Division shall send a letter to the foster provider that confirms the inactive status, states the reason for the status, and the length of inactive referral status.

(d) When the foster provider initiates inactive referral status, the inactive status ends at the request of the foster provider and when the Division has determined the conditions that warranted the inactive referral status have been resolved.

(A) There must be no conditions in the home that compromise the safety of the child already placed in the home.

(B) If applicable, a mutually agreed upon plan must be developed to address the issues prior to resuming active status.

(C) The foster provider must be in compliance with all certification rules, including training requirements, prior to a return to active status.

(2) DENIAL, SUSPENSION, REVOCATION, REFUSAL TO RENEW.

(a) The Division shall deny, suspend, revoke, or refuse to renew a child foster care certificate where it finds there has been substantial failure to comply with these rules.

(b) Failure to disclose requested information on the application or providing falsified, incomplete, or incorrect information on the application shall constitute grounds for denial or revocation of the certificate.

(c) The Division shall deny, suspend, revoke, or refuse to renew a certificate if the foster provider fails to submit a plan of correction, implement a plan of correction, or comply with a final order of the Division.

(d) Failure to comply with OAR 411-346-0200(5) may constitute grounds for denial, revocation, or refusal to renew.

(e) The Division may deny, suspend, revoke, or refuse to renew the child foster home certificate where imminent danger to health or safety of a child exists, including any founded report or substantiated abuse.

(f) The Division shall deny, suspend, revoke, or refuse to renew a certificate if the foster provider has been convicted of any crime that would have resulted in an unacceptable criminal records check upon certification.

(g) Suspension shall result in the removal of a child placed in the foster home and no placements shall be made during the period of suspension.

(h) The applicant or foster provider whose certificate has been denied or revoked may not reapply for certification for five years after the date of denial or revocation.

(i) The Division shall provide the applicant or the foster provider a written notice of denial, suspension, or revocation that states the reason for such action.

(j) Such revocation, suspension, or denial shall be done in accordance with the rules of the Division and ORS chapter 183 that govern contested cases.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 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 309-046-0220, 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

411-346-0230

Appeals

(1) Upon written notice of denial, suspension, revocation, or non-renewal of a certificate from the Division, an applicant, or foster provider may request a contested case hearing to appeal the decision pursuant to ORS 183.413 to 183.470.

(2) The written request must be submitted within 10 days of the denial, suspension, revocation, or non-renewal notification date and must specifically state the reasons for the appeal.

Stat. Auth.: ORS 409.050, 410.070, 430.215, & 443.835

Stats. Implemented: ORS 443.830 & 443.835

Hist.: MHD 3-2001, f. 5-25-01, cert. ef. 5-28-01; Renumbered from 309-046-0240, 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

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Rule Caption: Adult Protective Services and Alleged Elderly Abuse.

Adm. Order No.: SPD 8-2010

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 5-1-2010

Rules Adopted: 411-020-0025, 411-020-0085

Rules Amended: 411-020-0000, 411-020-0002, 411-020-0010, 411-020-0015, 411-020-0020, 411-020-0030, 411-020-0040, 411-020-0060, 411-020-0070, 411-020-0080, 411-020-0090, 411-020-0100, 411-020-0110, 411-020-0120, 411-020-0130

Rules Repealed: 411-020-0020(T), 411-020-0025(T), 411-020-0030(T), 411-020-0085(T), 411-020-0100(T), 411-020-0120(T), 411-021-0000, 411-021-0005, 411-021-0010, 411-021-0015, 411-021-0020, 411-021-0025, 411-020-0002(T)

Subject: To comply with ORS 124.050, the 2009 legislative changes from House Bill 2442 and Senate Bill 670, and to implement House Bill 2175 (2007), the Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently updating the adult protective services (APS) rules in OAR chapter 411, division 020.

In addition, SPD is permanently repealing the alleged elderly abuse rules in OAR chapter 411, division 021 because the rules are redundant with the APS rules in OAR chapter 411, division 020.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-020-0000

Purpose and Scope of Program

(1) RESPONSIBILITY. The Department of Human Services (Department), Seniors and People with Disabilities Division (Division) has responsibility to provide Adult Protective Services (APS) to older adults and to adults with physical disabilities whose situation is within the Division's jurisdiction to investigate.

(2) INTENT. The intent of the APS Program is to provide protection and intervention for older adults and adults with physical disabilities who are unable to protect themselves from harm and neglect.

(3) SCOPE OF SERVICES. The scope of services includes:

(a) Receiving reports of abuse, neglect, or self-neglect;

(b) Providing and documenting risk assessment of reported victims;

(c) Conducting and documenting investigations of reported wrongdoing; and

(d) Providing appropriate resources for victim safety.

(4) AVAILABILITY. Adult protective services are available from the Division to any adult resident of a Department-licensed facility, to nursing facility residents regardless of age and to any adult residing in the community who meets the eligibility criteria listed in OAR 411-020-0015.

(5) INTERVENTION MODEL.

(a) As a human services agency, the Division embraces a social model of intervention with a primary focus on offering safety and protection to the reported victim. The over-arching ethical value in adult protective services is the obligation to balance the duty to protect older adults and adults with physical disabilities with the duty to protect their rights to self-determination.

(b) The Division relies upon other key sources, such as law enforcement, legal, medical, and regulatory professionals, to assist in responding to the overall problems associated with abuse and neglect, and encourages active participation and sharing of appropriate information by APS staff on multidisciplinary teams.

(c) The Division supports efforts to promote education and outreach services that help identify and prevent abuse and neglect of older adults and adults with physical disabilities.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050-124.095, 410.020, 410.040, 410.070, 411.116, 441.630-441.695, 443.450, 443.500, & 443.767

Hist.: PWC 750(Temp), f. 8-18-75, ef. 8-21-75; PWC 769, f. 10-20-75, ef. 10-25-75; AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0000 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0002

Definitions

(1) "Abuse" means any of the following:

(a) PHYSICAL ABUSE.

(A) Physical abuse includes:

(i) The use of physical force that may result in bodily injury, physical pain, or impairment; or

(ii) Any physical injury to an adult caused by other than accidental means.

(B) For purposes of this section, conduct that may be considered physical abuse includes but is not limited to:

(i) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(ii) The use of force-feeding or physical punishment.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults in a coma or adults otherwise incapable of expressing injury or pain.

ADMINISTRATIVE RULES

(b) **NEGLECT.** Neglect including:

(A) Active or passive failure to provide the care, supervision, or services necessary to maintain the physical health and emotional well-being of an adult that creates a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity. The expectation for care, supervision, or services may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to where an individual has a fiduciary responsibility to assure the continuation of necessary care.

(B) Failure of an individual who is responsible to provide care or services to make a reasonable effort to protect an adult from abuse.

(C) An elderly person who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules.

(c) **ABANDONMENT.** Abandonment including desertion or willful forsaking of an adult for any period of time by an individual who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(d) **VERBAL OR EMOTIONAL ABUSE.**

(A) Verbal or emotional abuse includes threatening significant physical harm or threatening or causing significant emotional harm to an adult through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this section:

(i) Conduct that may be considered verbal or emotional abuse includes but is not limited to the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, regardless of their ability to comprehend.

(ii) The emotional harm that may result from verbal or emotional abuse includes but is not limited to anguish, distress, fear, unreasonable emotional discomfort, loss of personal dignity, or loss of autonomy.

(e) **FINANCIAL EXPLOITATION.** Financial exploitation including:

(A) Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out;

(C) Misappropriating or misusing any money from any account held jointly or singly by an adult; or

(D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

(f) **SEXUAL ABUSE.** Sexual abuse including:

(A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Sexual harassment or sexual exploitation of an adult or inappropriately exposing an adult to, or making an adult the subject of, sexually explicit material or language;

(C) Any sexual contact between an employee or volunteer of a facility or caregiver and an adult served by the facility or caregiver, unless a pre-existing relationship existed. Sexual abuse does not include consensual sexual contact between an adult and a caregiver who is the spouse or domestic partner of the adult;

(D) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(E) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525 except for incest due to marriage alone.

(g) **INVOLUNTARY SECLUSION.** Involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult.

(A) Involuntary seclusion may include:

(i) Confinement or restriction of an adult to his or her room or a specific area; or

(ii) Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals.

(B) In a facility, emergency or short-term, monitored separation from other residents may be permitted if used for a limited period of time when:

(i) Used as part of the care plan after other interventions have been attempted;

(ii) Used as a de-escalating intervention until the facility can evaluate the behavior and develop care plan interventions to meet the resident's needs; or

(iii) The resident needs to be secluded from certain areas of the facility when their presence in that specified area would pose a risk to health or safety.

(h) **WRONGFUL USE OF A PHYSICAL OR CHEMICAL RESTRAINT OF AN ADULT.**

(A) A wrongful use of a physical or chemical restraint includes situations where:

(i) A licensed health professional has not conducted a thorough assessment prior to implementing a licensed physician's prescription for restraint;

(ii) Less restrictive alternatives have not been evaluated prior to the use of the restraint; or

(iii) The restraint is used for convenience or discipline.

(B) Physical restraints may be permitted if used when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

(2) "Adult" means an older adult, an individual with a physical disability who is 18 years of age or older, or a resident of a Division licensed residential care facility, assisted living facility, or adult foster home.

(3) "APS" means adult protective services.

(4) "APS Risk Management" means the process by which adult protective services continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(5) "Area Agency on Aging (AAA)" means the agency designated by the Department with responsibility to provide a comprehensive and coordinated system of service to older adults or adults with disabilities in a designated planning and service area.

(6) "At-risk" means there is reason to believe injury, hazard, damage, or loss may occur.

(7) "Community Based Care Facility" means an assisted living facility, residential care facility, adult foster home, or registered room and board facility.

(8) "Conclusion" means:

(a) For the purposes of a facility investigation, a determination by the adult protective services worker whether an incident occurred and, if it did, whether the incident was the result of wrongdoing; and

(b) For the purposes of a community investigation or self-neglect assessment, a determination by the adult protective services worker as to whether an incident occurred and, if it did, whether the incident was the result of wrongdoing or self-neglect.

(9) "Conservatorship" means that a court has issued an order appointing and investing an individual with the power and duty of managing the property of another individual.

(10) "Department" means the Department of Human Services.

(11) "Division" means the Department of Human Services, Seniors and People with Disabilities Division.

(12) "Evidence" for the purpose of these rules, means material gathered, examined, or produced during the course of an adult protective services investigation. Evidence includes but is not limited to witness statements, documentation, photographs, and relevant physical evidence.

(13) "Guardianship" means a court has issued an order appointing and investing an individual with the power and duty of managing the care, comfort, or maintenance of an incapacitated adult.

(14) "Imminent Danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.

(15) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

(16) "Informed Choice" means the individual has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, and be able to reasonably choose from among those options and communicate that choice.

(17) "Law Enforcement Agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police;

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- (d) Any district attorney; or
- (e) The Oregon Department of Justice.

(18) "Licensed Care Facility" means a facility licensed by the Division, including nursing facilities, assisted living facilities, residential care facilities, and adult foster homes.

(19) "Local Office" means the local service staff of the Division or Area Agency on Aging.

(20) "Mandatory Reporter" for the purpose of these rules, means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If an individual is a mandatory reporter and, while acting in an official capacity, comes in contact with and has reasonable cause to believe that any individual living in a nursing facility or an older adult in any setting has suffered abuse or neglect, the mandatory reporter must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 or ORS 441.615 to 441.695 and OAR 411-085-0005, 411-085-0360, and 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the individual, while acting in an official capacity, comes into contact with anyone who has abused an older adult or any individual living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

(A) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(B) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;

(C) Employee of the Department, county health department, community mental health program, community developmental disabilities program, or a nursing facility, or an individual who contracts to provide services to a nursing facility;

(D) Peace officer;

(E) Clergy;

(F) Licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist;

(G) Physical, speech, or occupational therapist, audiologist, or speech language pathologist;

(H) Senior center employee;

(I) Information and referral or outreach worker;

(J) Area Agency on Aging employee;

(K) Firefighter;

(L) Emergency Medical Technician;

(M) Psychologist;

(N) Licensee of an adult foster home or an employee of the licensee; and

(O) For nursing facility abuse, all of the above, plus legal counsel, guardian, or family member of the resident.

(21) "Multidisciplinary Team (MDT)" means a county-based investigative and assessment team that coordinates and collaborates for allegations of adult abuse and self-neglect. The team may consist of personnel of law enforcement, the local district attorney office, local Division or Area Agency on Aging offices, community mental health and developmental disability programs, plus advocates for older adults and individuals with disabilities, and individuals specially trained in abuse.

(22) "Multidisciplinary Team (MDT) Member" means an individual or a representative of an agency that is allowed by law and recognized to participate on the multidisciplinary team.

(23) "Older Adult" for the purpose of these rules, means any individual 65 years of age or older.

(24) "Physical Disability" for the purpose of these rules, means any physical or cognitive condition such as brain injury and dementia that significantly interferes with an adult's ability to protect his or her self from harm or neglect. (See OAR 411-020-0015, Eligibility)

(25) "Relevant" means tending to prove or disprove the allegation at hand.

(26) "Reported Perpetrator (RP)" means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.

(27) "Reported Victim (RV)" means the individual whom wrongdoing or self-neglect is reported to have been committed against.

(28) "Risk Assessment" means the process by which an individual is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support

system, and other relevant factors are also evaluated to determine their impact on the individual's ability to become or remain safe.

(29) "Self-Determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(30) "Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

(31) "Serious Risk of Harm" means that without intervention the individual is likely to incur substantial injury or loss.

(32) "Services" as used in the definition of abuse includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other service essential to the well-being of an adult.

(33) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(34) "These Rules" mean the rules in OAR chapter 411, division 020.

(35) "Undue Influence" means the process by which an individual uses his or her role and power to exploit the trust, dependency, and fear of another individual and to deceptively gain control over the decision making of the second individual.

(36) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

(37) "Wrongdoing" means:

(a) For the purposes of a facility investigation, an act that violates a licensing or other rule without regard to the intent of the reported perpetrator or the outcome to the reported victim; and

(b) For the purposes of a community investigation, an action or inaction that meets the definition of abuse, without regard to the intent of the reported perpetrator or the outcome to the reported victim.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767

Stats. Implemented: ORS 124.050-124.095, 410.020, 410.040, 410.070, 411.116, 441.630-441.695, 443.450, 443.500, & 443.767

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SSD 5-1995, f. 5-31-95, cert. ef. 6-1-95; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0010

Authority and Responsibility

The Division is granted statutory authority and responsibility to protect older adults and adults with physical disabilities from harm or neglect. Specific authorizing statutes include:

(1) General Adult Protective Services:

(a) ORS 410.020 authorizes the Division to adopt rules, consistent with federal and state laws and regulations, for providing social services, including protection, to individuals needing or requesting services.

(b) These rules detail the steps in the adult protective services process.

(2) ADULT FOSTER HOMES.

(a) ORS 443.767 requires the Division to promptly investigate any complaint that a resident of an adult foster home has been injured, abused, or neglected and is in imminent danger, or has died or been hospitalized, and any complaint alleging the existence of any circumstances that could result in injury, abuse, or neglect of a resident and could place the resident's health or safety in imminent danger.

(b) OAR 411-050-0455 details the steps for filing, investigating, and documenting complaints in Adult Foster Homes.

(3) RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES.

(a) ORS 443.435 allows the Division access to a facility to determine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and 443.991(2) and the rules in OAR chapter 411, division 054.

(b) OAR 411-054-0105 details methods for conducting inspections and investigations in residential care and assisted living facilities.

(4) NURSING FACILITIES.

(a) ORS 441.635 requires mandatory reports and investigations of reportedly abused residents while ORS 441.650 to 441.695 addresses the process of investigation.

(b) OAR 411-089-0010 to 411-089-0030 details the procedure for receiving, investigating, and documenting investigations in nursing facilities and the corrective action procedure for substantiated complaints.

(5) ROOM AND BOARD FACILITIES.

(a) ORS 443.500 allows the Division access to a registered residential facility (room and board) to investigate complaints of abuse for purposes of ascertaining compliance with applicable rules, statutes, ordinances, and regulations. If the Division has reasonable cause to believe any facility is

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operating without registration in violation of ORS 443.480 to 443.500, the Division may apply to the circuit court for a search warrant.

(b) OAR 411-068-0060 to 411-068-0075 details procedures for filing and investigating complaints in room and board facilities.

(6) ELDER ABUSE.

(a) ORS 124.050 to 124.095 mandates reports and investigations of reportedly abused older adults.

(b) These rules detail the procedures for reporting, investigating, and documenting complaints of reported abuse to older adults.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0010 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0015

Eligibility Criteria

(1) Adult protective services as described in OAR 411-020-0040 are available for:

(a) Adults aged 65 and older;

(b) Adults aged 18 and older who have a physical disability as defined in these rules; and

(c) Anyone living in a nursing facility when they are reported to be victims of "abuse" as defined in these rules.

(2) Reported abuse to individuals who are entitled to services from the Division under ORS 430.735 to 430.765 and OAR 407-045-0250 to 407-045-0360 should be referred for investigation by the community mental health or developmental disabilities program or the Office of Investigations and Training.

(3) Eligibility for adult protective services is not dependent upon income or source of income.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0015 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0020

Reporting of Abuse and Neglect

(1) Mandatory reporters must report instances of suspected elder abuse (as defined in ORS 124.050) or abuse of residents in nursing facilities (as defined in ORS 441.630) to a Division designated local office or a local law enforcement agency. A psychiatrist or psychologist does not have to report privileged information covered under ORS 40.225 to 40.295.

(2) Reporting of instances involving abuse or neglect of older adults and adults with physical disabilities is highly encouraged for non-mandatory reporters. Anyone participating in the making of a report of elder abuse on reasonable grounds and good faith shall have immunity from any civil liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

(3) The identity of the individual reporting the suspected abuse shall be confidential and may be disclosed only with the consent of that individual, by judicial process (including administrative hearing), or as required to perform the investigation by the Division or a law enforcement agency.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 124.055 – 124.075, 124.090, 410.070, 411.116, 441.635 – 441.655, 441.671 – 441.675, 443.765

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0025

Multidisciplinary Team (MDT)

(1) The local Division or AAA office must participate in their county MDT to coordinate and collaborate on allegations of abuse and self-neglect of older adults and adults with physical disabilities. Adult protective services, when provided by the local office in conjunction with their participation on their county MDT, shall be provided as described in OAR 411-020-0040.

(2) All confidential information protected by federal and state law that is shared or obtained by the MDT members in the exercise of their duties on the MDT is confidential and may not be further disclosed except by law, authorization by the adult, or by court order.

(3) The local office must annually provide the MDT with the number of substantiated allegations of abuse of adults investigated by APS and also the number of APS cases referred to law enforcement in the county.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767

Stats. Implemented: ORS 410.070 & 411.116, sec. 8, Ch. 837, OL 2009

Hist.: SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0030

Confidentiality

(1) Oregon and federal statutes provide for the confidentiality of the identity of certain individuals and information obtained as a result of an APS intervention. Confidentiality of information is important to protect the privacy of individuals, to encourage the reporting of abuse and neglect, and to facilitate the obtaining of information.

(2) All information involving non-facility based investigations is confidential except for disclosure of the conclusion under OAR 411-020-0100(6) and may be disclosed only by judicial process, or as required by specific exceptions under state and federal law, or with the consent of the victim, but no names may be released without the consent of the individual named except as provided in section (4) of this rule.

(3) If the investigation involves a licensed care facility, information regarding the complaint and subsequent findings shall be made available to the general public upon request. On these types of complaints, information regarding the identity of the complainant, the reported victim, all witnesses, and the protected health information of any party shall remain confidential, unless release is specifically authorized by the affected individual or otherwise dictated by judicial process.

(4) Where the Division deems it is appropriate, the names of the complainant, reported victim, witnesses, and any investigative report may be made available to the following sources:

(a) Any law enforcement agency;

(b) An agency that licenses or certifies a facility where the reported abuse occurred, or licenses or certifies the individual who practices there;

(c) The Long Term Care Ombudsman;

(d) Any governmental or private non-profit agency providing adult protective services to the reported victim when that agency meets the confidentiality standards of ORS 124.090, including any federal law enforcement agency that has jurisdiction to investigate or prosecute for abuse defined in these rules, including but not limited to the Federal Bureau of Investigation (FBI), the Federal Trade Commission, or the U.S. Postal Inspection Service; or

(e) The MDT for the purpose of adult protective services for the abuse and self-neglect of older adults and adults with physical disabilities.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 124.050 – 124.095, 410.070, 410.150, 411.116, 441.630 – 441.695, 443.769

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0040

Services Provided

(1) Local Division designated offices must follow procedural guidelines consistent with Division policies guiding APS response activities. Although the role of APS is civil rather than criminal investigation, cooperative agreements with regulatory and enforcement agencies, such as local law enforcement, district attorneys, and licensing agencies are desirable.

(2) The Division shall establish and maintain agreements and understandings with other key agencies having a role in protecting the interests and rights of individuals who are the subject of these rules, including the Oregon State Police and the Department of Justice.

(3) The adult protective services function consists of a standard series of activities, including screening, triage or consultation, on-site assessment, investigation, intervention, documentation, and APS risk management. Deviations from these activities may be appropriate in order to protect the reported victim, but the reasons for these deviations must be staffed and properly documented in the investigative record.

(4) Adults have the right to make informed choices (as defined in 411-020-0002) that do not conform to societal norms as long as those decisions are not harmful to others. This includes the right to refuse participation in APS assessments, investigation, or intervention.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0005 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94, Renumbered from 411-020-0005; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0060

Screening

(1) All calls or contacts involving the possibility of abuse or neglect must be directed to APS screening.

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(2) Screening is the skilled interviewing process used to gather and assess information in order to determine eligibility for adult protective services. This activity includes a determination of whether the complaint meets the definition of abuse as contained in administrative rules.

(3) If the complaint meets the definition of abuse, screening activities may include but are not limited to:

(a) Gathering information about the reported victim's current level of functioning;

(b) Gathering demographic information and the history of the current problem;

(c) Reviewing any agency records related to the complaint; or

(d) Gathering information from collateral sources.

(4) If the complaint does not meet the definition of abuse but requires intervention, response shall include referral to other resources, including case management, licensing, or other services as appropriate.

(5) If the complaint does not meet the definition of abuse or require intervention but may be addressed by specialized information or assistance, a referral to APS consultation may be appropriate.

(6) If the complaint involves a client who is currently receiving case management or eligibility services, the worker assigned to the client must be notified. If the complaint involves a commercial adult foster home, the local licenser must be notified.

(7) Each local office must develop a protocol for tracking the outcome of every APS screening referral. A call number or other identifier must be assigned and shared with the complainant at the time of screening so that the complainant may re-contact the office and determine the disposition of the report.

(8) Each local office must establish an after hours reporting system.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767

Stats. Implemented: ORS 410.070, 411.116, 443.767

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0070

Consultation

(1) Consultation is the process by which APS provides specialized information or assistance, enhanced referral, or technical assistance via electronic means, including telephone, fax, or e-mail, to assist in harm reduction.

(2) Consultation as an alternative to assessment or investigation is only appropriate when the report does not meet eligibility criteria for abuse or neglect or for investigation of licensing violation.

(3) The local office must maintain a record of reports resolved by consultation.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767

Stats. Implemented: ORS 410.070, 411.116, 443.767

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0080

Triage

(1) Triage is the APS process of determining the nature and severity of risk to individuals and the immediacy of response required.

(2) The Division shall provide for a prompt and timely initial response to all APS referrals meeting the eligibility criteria established in these rules. The specific times for response are governed by the nature and severity of the complaint and the rules and laws related to the category of complaint.

(3) General time frames for response as determined by the Division are as follows:

(a) COMMUNITY CASES (Non-facility, elder abuse, and APS).

(A) IMMEDIATELY: Contact 911 when an emergency situation exists. An emergency is a situation in which evidence suggests that a human life is in jeopardy. The individual is in the process of being harmed due to criminal activity, medical emergency, fire, etc., or is a clear and present danger to self or others;

(B) WITHIN TWO HOURS OF RECEIPT OF COMPLAINT: Initiate investigation within two hours when the reported victim is identified as being in imminent danger;

(C) BY THE END OF THE NEXT DIVISION WORKING DAY: Initiate investigation by the end of the next working day when the individual is identified as being in a hazardous situation that is one that could lead to increased harm or risk; or

(D) WITHIN FIVE DIVISION WORKING DAYS: When screening determines that the situation is problematic, one that is chronic or ongoing, or is a general complaint that an immediate response is unlikely to change the reported victim's risk level, an investigation should be initiated within five working days.

(b) FACILITY CASES.

(A) NURSING FACILITY CASES.

(i) WITHIN TWO HOURS:

(I) If the resident's health or safety is in imminent danger; or

(II) The resident has recently died, been hospitalized, or been treated in an emergency department as a result of suspected abuse or neglect.

(ii) PRIOR TO THE END OF THE NEXT WORKING DAY: If circumstances exist that may result in abuse.

(B) ADULT FOSTER HOMES.

(i) WITHIN TWO HOURS:

(I) If the complaint alleges the resident has been injured, abused, or neglected and that any resident's health or safety is in imminent danger; or

(II) That the resident has died or been hospitalized due to abuse or neglect.

(ii) BY THE END OF THE NEXT DIVISION WORKING DAY: If circumstances exist that may result in injury, abuse, or neglect.

(C) ASSISTED LIVING FACILITY, RESIDENTIAL CARE FACILITY, ROOM AND BOARD FACILITY.

(i) IMMEDIATELY: If circumstances exist that may result in injury, abuse, or neglect and may place the resident's health or safety in imminent danger; or

(ii) BY THE END OF THE NEXT WORKING DAY: In all other cases.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767

Stats. Implemented: ORS 124.065 – 124.070, 410.070, 411.116, 441.645 – 441.650, 443.500, 443.767

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0085

Law Enforcement Notification

(1) The Division shall immediately notify law enforcement if any of the following conditions exist and proceed collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:

(a) There is reasonable cause to believe a crime has been committed;

(b) Access to the reportedly abused individual is denied and legal assistance is needed in gaining access;

(c) The situation presents a credible danger to the Department worker or others and police escort is advisable; or

(d) Forensic photographic or other evidence is needed.

(2) Written notice, regardless of any verbal notice given, shall be provided to law enforcement for all instances when the Division finds that there is reasonable cause to believe a crime has been committed.

(3) When the local Division or AAA office notifies a law enforcement agency of suspected crime committed against a reported victim, the local office must track the progress as reported from the law enforcement agency on the investigation and the district attorney's office on the prosecution of the crime.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767

Stats. Implemented: ORS 124.065–124.070, 410.070, 411.116, 441.645 – 441.650, 443.500, 443.767

Hist.: SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0090

Assessment

(1) Assessment is the process by which the APS worker determines the reported victim's degree of risk, level of functioning, adequacy of information, and ability to protect his or her own interests. Assessment additionally determines the reported victim's ability to reduce the risk of harm in his or her environment and to make informed choices and understand the consequences of those choices. These factors are evaluated in relation to the allegation of abuse or neglect.

(2) Assessment in APS cases shall be conducted in person with the reported victim, usually in the reported victim's home or the facility where the reported victim lives.

(3) The assessment may include:

(a) Consultation with family, neighbors, law enforcement, mental health, hospice, in-home services, medical practitioners, domestic violence providers, etc. in keeping with Department confidentiality guidelines.

(b) The use of accepted screening tools as well as the worker's professional judgment to determine the reported victim's safety and functional abilities.

(4) If there is evidence that the reported victim's cognitive abilities may be impaired, recognized assessment tools may be administered to gauge those abilities. The initial assessment results shall be used as a screening to determine the need for professional diagnostic or clinical evaluation of the reported victim's capacity to make informed choices, and to

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determine an appropriate course of action if clinical evaluation is not available.

(5) Upon completion of the initial APS assessment, the complaint shall be continued for investigation where there is a reported perpetrator, or shall proceed directly to intervention where self-neglect is established. Where there is no perpetrator and self-neglect is not established, the reported victim shall be offered resource information, and the case shall be documented and closed.

(6) Results of the APS assessment of the reported victim's cognitive and functional abilities shall be recorded in the relevant portions of the Client Assessment and Planning System or other Department-approved system. A summary of the relevant portions shall be included in the APS report.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 410.070, 411.116, 443.767
Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0100

Community Investigation, Documentation and Notification

(1) Investigation is the process of determining whether abuse or neglect occurred. The investigation results in a finding as to whether the initial complaint is substantiated or unsubstantiated, or whether the results of the investigation are inconclusive.

(2) An investigation shall be completed and documented when a perpetrator is reported to have abused or neglected a victim.

(3) Investigations are to be objective, professional, and complete.

(4) In completing the investigation, the APS worker must:

(a) Identify the reported victim, the reported perpetrator, and any parties reported to have information relevant to proving or disproving the allegation;

(b) Conduct unannounced interviews with the parties described in section (a) above to gather all relevant available evidence. All interviews must be private unless the individual being interviewed requests the presence of someone else. Any individuals sitting in must be advised of the confidential nature of the investigation;

(c) Obtain and review any available and relevant documentary or physical evidence;

(d) Create additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegation;

(e) Maintain a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(f) Determine the facts of the case based on a fair and objective review of the available relevant evidence; and

(g) Conclude whether the preponderance (majority) of the evidence indicates whether the incident occurred and whether abuse or neglect is substantiated or unsubstantiated, or determine that the evidence is inconclusive.

(5) The local office must document the investigation in a timely manner and in a standard report format consistent with Division policy.

(a) Documentation of community assessments and investigations must include but not necessarily be limited to:

(A) A summary of the findings;

(B) Conclusions; and

(C) Any plans of action that are recommended or taken.

(b) Data in the report must include:

(A) Characteristics of the reported victim;

(B) Relationship of the reported victim to the complainant, witnesses, and reported perpetrator;

(C) Type of reported mistreatment or abuse;

(D) Conclusion; and

(E) Outcome.

(c) Reports must be written and closed on a Department-approved system, (e.g., Oregon ACCESS).

(6) When a community complaint investigation has been completed, the complainant, the reported victim, and the reported perpetrator may be informed (verbally, unless notification in writing is requested) that appropriate action is being taken, and that no abuse was found (unsubstantiated), abuse was found (substantiated), or the investigation was 'inconclusive'.

(7) The Department or the law enforcement agency may photograph, or cause to have photographed, any reported victim for the purposes of preserving evidence of the reported victim's condition observed at the time of the investigation. The photographs shall be considered records and subject to confidentiality rules.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.065 - 124.070, 124.080, 410.070, 411.116, 441.645 - 441.650, 441.660, 443.500, 443.767

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0110

Community Intervention

(1) Intervention is the process by which APS assists the victim to reduce or remove the threat of harm that has placed the victim at risk.

(2) Intervention may include but is not necessarily limited to:

(a) Arranging for emergency services such as law enforcement, emergency medical care, etc. as needed;

(b) Providing education and counseling to the individual at risk and other parties as appropriate;

(c) Facilitating the delivery of additional available support services, including legal, medical, and other services, and helping to arrange for possible alternative living arrangements or alternate decision makers as needed; or

(d) Providing advocacy to assure the rights of the reported victim are protected.

(3) Intervention may happen one or more times during the assessment or investigation process, or as an end result of the assessment or investigation. The initial APS intervention is designed to be short-term crisis response. Longer term intervention may be made available through APS risk management or through non-APS case management.

(4) An individual who can make an informed choice may refuse assistance or intervention. In this case, the worker must provide the individual with appropriate resource information and a way to re-contact APS should a threat of harm recur or reach a level unacceptable to the individual.

(5) If the individual at risk is unable to make an informed choice due to a lack of capacity, appropriate intervention must include medical assessment to determine whether capacity may be improved or restored.

(6) If the individual at risk is unable to consent to assessment or treatment, consideration must be given to involuntary intervention, including as appropriate, guardianship, conservatorship, protective orders, or civil commitment. In all such cases the intervention initiated must be the least restrictive available, must respect the values of the individual at risk, and must be sought only when it has been determined that there is no surrogate decision maker in place, or that such individual is not acting responsibly in that role.

(7) If the individual lacks appropriate information, the worker must provide or arrange for the provision of all relevant information in a manner that is timely, accessible to the individual, and balanced, in order to support the individual's right to make an informed choice.

(8) When the assessment or investigation is complete, the case shall be either:

(a) Documented and referred to APS risk management for further monitoring and intervention if the situation meets the criteria in OAR 411-020-0130, or

(b) Closed and documented because:

(A) The situation is resolved or has been referred to appropriate services for resolution; or

(B) The individual at risk, having the ability to do so, decides not to have further adult protective services.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767

Stats. Implemented: ORS 410.070, 411.116, 443.767

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0120

Facility Investigation, Documentation and Notification

(1) Investigations shall be objective, professional, and complete.

(2) In completing the investigation, the APS worker must:

(a) Identify the reported victim, the reported perpetrator, and any parties reported to have information relevant to proving or disproving the allegation;

(b) Conduct interviews with the parties described in section (a) above to gather all relevant available evidence. Interviews shall be unannounced whenever possible. All interviews must be private unless the individual being interviewed requests the presence of someone else. Any individuals sitting in must be advised of the confidential nature of the investigation;

(c) Obtain and review any available and relevant documentary or physical evidence;

(d) Create additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegation;

(e) Maintain a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(f) Determine the facts of the case based on a fair and objective review of the available relevant evidence; and

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(g) Conclude whether the preponderance (majority) of the evidence indicates the incident occurred and whether wrongdoing was substantiated or unsubstantiated, or determine that the evidence is inconclusive. The determination as to whether substantiated wrongdoing meets the definitions of abuse shall be determined by the Division's Central Office.

(3) In conducting facility abuse investigations, the Division protocols governing activities of investigations further include:

(a) Notifying the Division's Client Care Monitoring Unit (CCMU) if:

(A) A situation exists in a nursing facility that meets criteria for CCMU to complete the investigation. Where CCMU shall conduct the investigation, the local office must provide coordination to assure victim safety; or

(B) A situation exists in a residential care facility or an assisted living facility that may cause CCMU to conduct a survey. This includes reports of facility-wide issues.

(b) Providing an opportunity for the complainant or a designee of the complainant, or both, to accompany the investigator to the site of the reported violation for the sole purpose of identifying individuals or objects relevant to the investigation;

(c) Conducting an unannounced site visit to the facility; and

(d) Arranging for immediate protection. The worker must direct the provider to correct any substantiated problem immediately.

(4) The local office must submit detailed investigation reports written on the Division's Facility Report Writing System to the Office of Licensing and Quality of Care in Central Office. The local office must refer these reports to the appropriate office within 60 days of the receipt of the complaint for a community based care facility and within 62 days for a nursing facility.

(a) Facility investigations must be written at the local office on the Division's Facility Report Writing System. Documentation of facility investigations must include for each allegation:

(A) A statement of the allegation;

(B) Summary of witness statements;

(C) Investigator observations, including documentary review;

(D) Findings of fact; and

(E) Conclusion.

(b) When wrongdoing is substantiated, findings in the investigation may be used to support civil or criminal sanctions against the perpetrator or care facility.

(c) The local office must retain hard copies of facility investigation reports for a period of 10 years after last activity.

(5) When a facility investigation has been completed, notification to the complainant and other appropriate parties must be done according to procedures as specified in the relevant facility licensing rules or policy.

(6) If the reported abuse is also the subject of a law enforcement report or criminal prosecution, copies of investigation reports must be forwarded to the law enforcement agency having jurisdiction.

(7) The Division may collect standardized statewide data on all types of adult protective services including but not limited to information on the number of cases, types of incidents, individual characteristics, and outcomes.

(8) The Department or the law enforcement agency may photograph, or cause to have photographed, any reported victim for the purposes of preserving evidence of the reported victim's condition observed at the time of the investigation. The photographs shall be considered records and subject to confidentiality rules.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.065 - 124.070, 124.080, 410.070, 411.116, 441.645 - 441.650, 441.660, 443.500, 443.767
Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0005 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; Renumbered from 411-020-0050, SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

411-020-0130

APS Risk Management

(1) APS risk management is the process by which APS continues to provide active reassessment and intervention to a reported victim once the initial assessment or investigation phase has been completed.

(2) Referral to APS risk management is appropriate when:

(a) Assessment indicates that the reported victim continues to be vulnerable and at serious risk of harm;

(b) Continued reassessment and intervention may reduce the risk of harm; and

(c) There is no other source of case management available to the reported victim.

(3) APS risk management includes:

(a) The development and implementation of an individualized plan to reduce the risk of harm to the reported victim;

(b) Regular active contact with the reported victim to reassess the risk of harm and the effectiveness of interventions; and

(c) Documentation of assessments and interventions.

(4) APS risk management continues until assessment demonstrates that the level of harm has been reduced to an acceptable level. Approval by supervisor or designee must be required to continue an APS risk management case beyond one year.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767

Stats. Implemented: ORS 410.070, 411.116, 443.767

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10

Rule Caption: Adult Foster Homes.

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Rules Repealed: 411-050-0400(T), 411-050-0410(T), 411-050-0412(T), 411-050-0415(T), 411-050-0420(T), 411-050-0440(T), 411-050-0444(T), 411-050-0455(T), 411-050-0460(T), 411-050-0480(T), 411-050-0481(T), 411-050-0487(T)

Subject: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is permanently updating the adult foster home rules in OAR chapter 411, division 050 to comply with the 2009 legislative changes from Senate Bill 162, Senate Bill 163, Senate Bill 287, Senate Bill 670, House Bill 2442, and the 2010 legislative changes from House Bill 3698.

In addition, SPD is permanently amending the rules to:

- Define subject individual;
- Clarify relative adult foster home and limited foster home requirements;
- Clarify the number of caregivers required in determining license capacity;
- Clarify portability of criminal records checks;
- Require all subject individuals to self-report any potentially disqualifying convictions and the licensee to notify SPD;
- Prohibit an exception to the minimum age requirement for the licensee and other caregivers;
- Require that fireplaces have approved protective glass screens or metal mesh screens anchored to the top and bottom; and
- Require the licensee to comply with any final order of SPD.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-050-0400

Definitions

For the purpose of these rules, authorized under ORS 443.705 to 443.825, the following definitions apply:

(1) "AAA" means an Area Agency on Aging which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act which has responsibility for local administration of programs within the Department of Human Services, Seniors and People with Disabilities Division. For the purpose of these rules, Type B AAAs contract with the Department to perform specific activities in relation to licensing adult foster homes including processing applications, conducting inspections and investigations, issuing licenses, and making recommendations to the Division regarding adult foster home license denial, revocation, suspension, non-renewal, and civil penalties.

(2) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).

(3) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for health and safety. For the purpose of these rules, ADLs consist of eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toilet-

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ing, bowel, and bladder management), and cognition and behavior management.

(a) "Independent" means the resident may perform an ADL without help.

(b) "Assist" means the resident is unable to accomplish all tasks of an ADL, even with assistive devices, without the assistance of another person.

(c) "Full Assist" means the resident is unable to do any part of an ADL task, even with assistive devices, without the assistance of another person. This means the resident requires the hands-on assistance of another person through all phases of the activity, every time the activity is attempted.

(4) "Adult Foster Home (AFH)" means any family home or other facility in which residential care is provided in a home-like environment for compensation to five or fewer adults who are elderly or physically disabled and are not related to the licensee or resident manager by blood, marriage, or adoption. For the purpose of these rules, adult foster home does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no resident thereof requires any element of care. "Facility" and "home" are synonymous with adult foster home.

(5) "Advance Directive for Health Care" means the legal document signed by the resident giving health care instructions in the event that the resident is no longer able to give directions regarding his or her wishes. The directive gives the resident the means to continue to control her or his own health care in any circumstance.

(6) "Applicant" means any person who completes an application for a license who shall also be an owner of the business.

(7) "Behavioral Interventions" mean those interventions that modify the resident's behavior or the resident's environment.

(8) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR chapter 851, division 047.

(9) "Care" means the provision of room, board, and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreation, or medication management, except that assistance with self-medication is not included as part of care for purposes of these rules. Care also means assistance to promote maximum independence and enhance the quality of life for residents.

(10) "Caregiver" means any person responsible for providing care and services to residents, including the licensee, the resident manager, shift caregiver, and any temporary, substitute, or supplemental staff, or other person designated to provide care and services to residents.

(11) "Care Plan" means the licensee's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services shall be provided.

(12) "Classification" means a designation of license assigned to a licensee based on the qualifications of the licensee, resident manager, and shift caregiver's qualifications, as applicable.

(13) "Client" means a resident in an adult foster home for whom the Department pays for care and for whom case management services are provided. "Client" also means a Medicaid recipient.

(14) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a licensee in exchange for room, board, care, and services. Compensation does not include the voluntary sharing of expenses between or among roommates.

(15) "Complaint" means an allegation that a licensee or caregiver has violated these rules or an expression of dissatisfaction relating to a resident or the condition of the adult foster home.

(16) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(17) "Criminal Records Check Rules" refers to OAR 407-007-0200 to 407-007-0370.

(18) "Day Care" means care, assistance, and supervision of an individual who does not stay overnight.

(19) "Delegation" means the process by which a registered nurse teaches and supervises a skilled nursing task.

(20) "Department" means the Department of Human Services.

(21) "Director" means the Director of the Department of Human Services or that person's designee.

(22) "Disabled" means an individual with a physical, cognitive, or emotional impairment which, for the individual, constitutes or results in a functional limitation in one or more activities of daily living.

(23) "Division" means the Seniors and People with Disabilities Division (SPD) of the Department of Human Services. Division also

includes the local Division units and the AAAs who have contracted to perform specific functions of the licensing process.

(24) "Elderly" or "Aged," for the purposes of these rules, means any person age 65 or older.

(25) "Exception" means a variance from a regulation or provision of these rules, granted in writing by the Division, upon written application by the licensee.

(26) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster homes which the Director finds are equal to or superior to the requirements of ORS 443.705 to 443.825 and which the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825. Exempt area county licensing rules must be submitted to the Director for review and approval prior to implementation.

(27) "Family Member," for the purpose of these rules, means husband or wife, natural parent, child, sibling, adopted child, adoptive parent, step-parent, 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.

(28) "Home" means the physical structure in which residents live. Home is synonymous with adult foster home.

(29) "Home-like" means an environment that promotes the dignity, security, and comfort of residents through the provision of personalized care and services and encourages independence, choice, and decision-making by the residents.

(30) "House Policies" mean written and posted statements addressing house activities in an adult foster home.

(31) "Legal Representative" means a person who has the legal authority to act for the resident.

(a) For health care decisions, this is a court-appointed guardian, a health care representative under an Advance Directive for Health Care, or Power of Attorney for Health Care.

(b) For financial decisions, this is a legal conservator, an agent under a power of attorney, or a representative payee.

(32) "License" means a certificate issued by the Division to applicants who are in compliance with the requirements of these rules.

(33) "Licensed Health Care Professional" means a person who possesses a professional medical license that is valid in Oregon. Examples include but are not limited to a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), respiratory therapist (RT), physical therapist (PT), or occupational therapist (OT).

(34) "Licensee" means the person who applied for, was issued a license, and whose name is on the license and who is responsible for the operation of the home. The licensee of the adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless he or she is also the operator.

(35) "Limited License" means a license is issued to a licensee who intends to provide care for compensation to a specific individual who is unrelated to the licensee but with whom there is an established relationship.

(36) "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.

(37) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are taught or delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel, as governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.

(38) "Occupant" means anyone residing in or using the facilities of the adult foster home including residents, licensees, resident managers, friends or family members, day care persons, and boarders.

(39) "Ombudsman" means the Oregon Long-Term Care Ombudsman or an individual designee appointed by the Long-Term Care Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of the adult foster home residents.

(40) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, the resident's body which the resident may not easily remove and restricts freedom of movement or normal access to his or her body. Physical restraints include but are not limited to wrist or leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, and any chair that prevents rising (such as a Geri-chair). Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. The side rail

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is not considered a restraint when a resident requests a side rail for the purpose of assistance with turning.

(41) "P.R.N. (pro re nata) Medications and Treatments" mean those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(42) "Provider" means any person operating an adult foster home (i.e., licensee, resident manager, or shift caregiver). "Provider" does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

(43) "Provisional License" means a 60-day license issued to a qualified person in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person must meet the standards of OAR 411-050-0440 and 411-050-0443 except for completing the training and testing requirements. (See OAR 411-050-0415(9))

(44) "Psychoactive Medications" mean various medications used to alter mood, anxiety, behavior, or cognitive processes. For the purpose of these rules, psychoactive medications include but are not limited to antipsychotics, sedatives, hypnotics, and anti-anxiety medications.

(45) "Relative" means those persons identified as family members as defined in this rule.

(46) "Relative Adult Foster Home" means a home in which care and services are provided only to adult family members of the licensed provider who are 18 years or older and are elderly or physically disabled. The adult family member receiving care must be eligible for Medicaid assistance from the Department. A spouse is not eligible for compensation as a relative adult foster care licensee.

(47) "Reside" means for a person to make an adult foster home his or her residence on a frequent or continuous basis.

(48) "Resident" means any individual who is receiving room, board, care, and services for compensation in an adult foster home on a 24-hour day basis.

(49) "Residential Care" means the provision of care on a 24-hour day basis.

(50) "Resident Manager" means an employee of the licensee who lives in the home and is directly responsible for the care of residents on a 24-hour day basis for five consecutive days.

(51) "Resident Rights" or "Rights" means civil, legal, or human rights including but not limited to those rights listed in the Adult Foster Home Residents' Bill of Rights. (See ORS 443.739)

(52) "Respite Resident" means a person who receives care for a period of 14 calendar days or less or who only stays overnight.

(53) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, and housekeeping to adults who are elderly or physically disabled and do not need assistance with their activities of daily living. Room and board facilities for two or more persons must register with the Division under OAR chapter 411, division 068.

(54) "Self-Administration of Medication" means the act of a resident placing a medication in or on his or her own body. The resident identifies the medication, the time and manner of administration, and places the medication internally or externally on his or her own body without assistance.

(55) "Self-Preservation" in relation to fire and life safety means the ability of residents to respond to an alarm without additional cues and reach a point of safety without assistance.

(56) "Services" mean activities that help the residents develop skills to increase or maintain their level of functioning or which assist the residents to perform personal care or activities of daily living or individual social activities.

(57) "Shift Caregivers" mean caregivers who, by written exception of the Division, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours per day, in homes where there is no licensee or resident manager living in the home.

(58) "Subject Individual" means:

(a) Any person 16 years of age or older including:

(A) All licensed adult foster home providers and provider applicants;

(B) All persons intending to work in or currently working in the adult foster home including but not limited to direct caregivers and individuals in training;

(C) Occupants, excluding residents, residing in or on the premises of the proposed or currently licensed adult foster home including household members and boarders; or

(D) Volunteers if allowed unsupervised access to residents.

(b) "Subject Individual" does not apply to:

(A) Residents of the adult foster home and residents' visitors;

(B) Persons who live or work on the adult foster home premises who do not:

(i) Have regular access to the home for meals; or

(ii) Have regular use of the adult foster home's appliances or facilities; and

(iii) Have unsupervised access to residents or residents' personal property.

(C) Persons employed by a private business that provides services to residents and is not regulated by the Department.

(59) "Substitute Caregiver" means any person other than the licensee, resident manager, or shift caregiver who provides care and services in an adult foster home under the jurisdiction of the Division.

(60) "These Rules" mean the rules in OAR chapter 411, division 050.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.705

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0405

License Required

(1) Any facility, which meets the definition of an adult foster home in OAR 411-050-0400, must apply for and obtain a license from the Division or an exempt area county.

(2) A person or entity may not represent themselves as operating an adult foster home or accept placement of an individual without being licensed as an adult foster home.

(3) RELATIVE ADULT FOSTER HOME. Any home, which meets the definition of a relative adult foster home, must have a license from the Division if receiving compensation from the Department.

(a) To qualify for this license and for compensation from the Department, the applicant or licensee must submit:

(A) A completed application for initial and renewal licenses;

(B) The Department's Health History and Physician or Nurse Practitioner's Statement that indicates the applicant is physically, cognitively, and emotionally capable of providing care to his or her relative. The completed form must be submitted initially and every third year or sooner if there is reasonable cause for health concerns;

(C) The Department's Background Check Request form completed by each subject individual and approved according to OAR 411-050-0412.

(b) The applicant or licensee must demonstrate a clear understanding of the resident's care needs;

(c) The applicant or licensee must meet minimal fire safety standards including:

(A) Functional smoke alarms installed in all sleeping areas and hallways or access ways that adjoin sleeping areas; and

(B) A functional 2-A-10BC fire extinguisher on each floor of the home.

(d) The applicant or licensee must obtain any training and maintain resident record documentation deemed necessary by the Division to provide adequate care for the resident.

(e) A spouse is not eligible for compensation as a relative adult foster care licensee. A relative adult foster home license is not required if services are provided to a relative without compensation to the licensee from the Department.

(4) LIMITED FOSTER HOME. If a home meets the definition of a limited license, the home must be licensed by the Division if the caregiver receives compensation privately or from the Department. The license shall be limited to the care of a specific individual and the licensee shall make no other admissions. The individual receiving care shall be named on the license. The licensee may be subject to the requirements specified in Standards and Practices for Care and Services (See OAR 411-050-0447). The person requesting a limited license must:

(a) At a minimum, meet the standards of a relative adult foster home;

(b) Submit the Department's Background Check Request form completed by each subject individual and approved according to OAR 411-050-0412; and

(c) Acquire any additional training deemed necessary by the Division to provide adequate care for the resident.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.725

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-1986; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

ADMINISTRATIVE RULES

411-050-0408

Capacity

(1) Residents must be limited to five persons who are unrelated to the licensee and resident manager by blood or marriage and require care.

(2) Respite residents are included in the license capacity of the home.

(3) The number of residents permitted to reside in an adult foster home shall be determined by the ability of the staff to meet the care needs of the residents, the fire safety standards for evacuation, and compliance with the facility standards of these rules.

(4) Determination of maximum capacity must include consideration of:

(a) Total household composition including children and relatives requiring care and supervision;

(b) A minimum of one qualified caregiver per five residents, including respite and day care; and

(c) Whether children over the age of five have a bedroom separate from their parents.

(5) When there are family members requiring care in a home in which the licensee is the primary, live-in caregiver, the allowable number of unrelated residents shall be a maximum capacity of five if the following criteria are met:

(a) The licensee is able to demonstrate the ability to evacuate all occupants from the adult foster home within three minutes or less (See OAR 411-050-0445(5)(o));

(b) The licensee has adequate staff and has demonstrated the ability to provide appropriate care for all residents (See OAR 411-050-0444(1)(e));

(c) There is an additional 40 square feet of common living space for each person above the five residents (See OAR 411-050-0445(1)(e));

(d) Bathrooms and bedrooms meet the requirements of OAR 411-050-0445(3) and (4);

(e) The care needs of day care and respite individuals are within the classification of the license and any conditions imposed on the license; and

(f) The well-being of the household, including any children or other family members, may not be jeopardized.

(6) If there are day care individuals in the home, licensees must have arrangements for day care individuals to sleep in areas other than a resident's bed, a resident's private room, or space designated as common use, in accordance with OAR 411-050-0445(4)(c).

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.705 & 443.775

Hist.: SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0410

License Application and Fees

(1) The Department's application form must be completed and submitted with the non-refundable fee by the licensee applicant. The application is not complete until all of the required application information is submitted to the Division. Incomplete applications are void after 60 calendar days from the date the licensing office receives the application form and nonrefundable fee. Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an adult foster home is to be operated.

(3) The license application must include:

(a) Complete contact information for the applicant, including a mailing address if different from the adult foster home, and a business address for electronic mail;

(b) Verification of attendance at a local office Orientation and successful completion of the Division's Basic Training examination. (See OAR 411-050-0440(1)(g)(A) and (B));

(c) The maximum resident capacity requested that includes any respite residents and identifies any relatives needing care. The applicant must indicate the maximum number of any room and board occupants and day care individuals and include the name of any other occupants in the home;

(d) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of staff as required by the Division;

(e) A Health History and Physician or Nurse Practitioner's Statement (form SDS 903) regarding the applicant's ability to provide care;

(f) A completed Financial Information sheet (SDS 448A), a budget for operating the home that includes payroll expenses, and proof of at least two months' liquid resources;

(g) The applicant must provide the Division with a list of all unsatisfied judgments, liens, and pending lawsuits in which a claim for money or property is made against the applicant; all bankruptcy filings by the applicant; and all unpaid taxes due from the applicant. The Division shall require the applicant provide proof of having the amount of resources necessary to pay those claims. The Division may require or permit the applicant to provide a current credit report to satisfy this financial requirement;

(h) If the home is leased or rented, the applicant must submit a copy of the lease or rental agreement. The agreement must be a standard lease or rental agreement for residential use and include the following:

(A) The owner and landlord's name;

(B) Verification that the rent is a flat rate; and

(C) Signatures and date signed by the landlord and applicant;

(i) If the applicant is purchasing or owns the home, verification of purchase or ownership must be submitted with the application. The financial information may not be included in the public file;

(j) A signed Criminal Records Request form provided by the Department for each subject individual;

(k) The applicant must submit a current and accurate floor plan that indicates:

(A) The size of rooms;

(B) Which rooms are to be resident bedrooms and which are to be caregiver bedrooms;

(C) The location of all the exits on each level of the home, including emergency exits such as windows;

(D) The location of any wheelchair ramps, if applicable;

(E) The location of all fire extinguishers and smoke alarms; and

(F) The planned evacuation routes.

(l) If requesting a license to operate more than one home, a plan covering administrative responsibilities, staffing qualifications, and additional evidence of financial responsibility;

(m) A \$20 per bed non-refundable fee for each non-relative resident;

(n) Three personal references who are not family members of the applicant (See OAR 411-050-0400(27)). Current or potential licensees and co-workers of current or potential licensees are not eligible as personal references;

(o) If the applicant or licensee intends to use a resident manager or shift caregivers, a Department's supplemental application completed by the resident manager or shift caregivers must be submitted; and

(p) Written information describing the operation plan for the adult foster home, including the use of substitute caregivers, other staff, a backup licensed provider, or approved resident manager if applicable, and a plan on coverage for resident manager or shift caregiver absences, if applicable.

(4) SHIFT CAREGIVERS. Shift caregivers may be used in lieu of a resident manager if granted a written exception by the Division. Use of shift caregivers detracts from the intent of a home-like environment, but may be allowed for specific resident populations. The type of residents served must be a specialized population with intense care needs such as those with Alzheimer's Disease, AIDS, or head injuries. If shift caregivers are used, they must meet or exceed the experience and training qualifications for the license classification requested.

(5) After receipt of the completed application materials including the non-refundable fee, the Division shall investigate the information submitted including pertinent information received from outside sources, inspect the home, and conduct a personal interview with the applicant.

(6) If cited violations from the home inspection are not corrected within the time frames specified by the Division, the issuance of the license shall be denied.

(7) The applicant may withdraw his or her application at any time during the application process by written notification to the Division.

(8) An applicant whose license has been revoked, voluntarily surrendered during a revocation or non-renewal process, or whose application for licensure has been denied shall not be permitted to make a new application for one year from the date the revocation, surrender, or denial was final, or for a longer period if specified in the order revoking or denying the license.

(9) All moneys collected under ORS 443.725 to 443.780 shall be paid to the Quality Care Fund.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

ADMINISTRATIVE RULES

411-050-0412

Criminal Records Check

(1) All subject individuals must be approved and maintained as required in accordance with these rules and OAR 407-007-0200 to 407-007-0370, Criminal Records Check Rules:

(a) Annually;

(b) Prior to a subject individual's change in position (i.e., changing from substitute caregiver to resident manager); and

(c) Prior to working in another home, regardless of whether the employer was the same or not, unless section (2) of this rule applies.

(2) PORTABILITY OF CRIMINAL RECORDS CHECK APPROVAL. A subject individual may be approved to work in multiple homes within the jurisdiction of the local Division. The Department's Background Check Request form must be completed by the subject individual to show intent to work at various adult foster homes within the local Division's jurisdiction.

(3) On or after July 28, 2009, no licensee, licensee applicant, or employee of the licensee shall be approved who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(4) Section (3) of this rule does not apply to:

(a) Employees of the licensee who were hired prior to July 28, 2009 if they continue employment in the same position; or

(b) Any subject individual who is an occupant of the home but is neither a licensee nor a caregiver.

(5) The licensee must have written verification from the Division that the required criminal records checks have been completed for all subject individuals. (See OAR 411-050-0444(6)(a)(A))

(6) All subject individuals must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The licensee must notify the Division or designee within 24 hours.

(7) The Division must provide for the expedited completion of a criminal records check for the state of Oregon when requested by a licensed provider because of an immediate staffing need.

Stat. Auth.: ORS 181.534, 410.070 & 443.004

Stats. Implemented: ORS 181.534, 443.004, & 443.735

Hist.: SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 1-2010(Temp), f. & cert. ef. 3-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0415

Issuance

(1) The Division shall issue a license within 60 calendar days after the completed application materials have been received if the home and applicant are in compliance with these rules. The license shall state the name of the resident manager, or shift caregivers as applicable, the name of the licensee who have met the requirements to operate the adult foster home, the address of the premises to which the license applies, the license classification, the maximum number of residents, and the expiration date. The license must be posted in a prominent place in the home and be available for inspection at all times.

(2) The licensee shall be given a copy of the Division's inspection report form as follows:

(a) INITIAL LICENSE. Form SDS 516 identifying any areas of non-compliance, and a time frame for correction.

(b) RENEWAL LICENSE. Form SDS 517A and, if applicable, form SDS 517B identifying any areas of non-compliance. The SDS 517B shall specify a time frame for correction of each violation, not to exceed 30 calendar days from the date of inspection.

(3) The licensee must post the most recent inspection reports in the entry or equally prominent place and must, upon request, provide a copy of the reports to each resident, person applying for admission to the home, or the legal representative, guardian or conservator of a resident.

(4) The Division may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home. The conditions must be posted with the license (See OAR 411-050-0483).

(5) The Division shall not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and these rules;

(b) The applicant currently operates, or has operated, any other facility licensed by the applicant in substantial compliance with ORS 443.705 to 443.825;

(c) The Division has completed an inspection of the adult foster home;

(d) The Department has completed a criminal records check in accordance with OAR 411-050-0412;

(e) The Division has checked the record of sanctions available from its files;

(f) The Division has determined that the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse; and

(g) The applicant has demonstrated to the Division the financial ability and resources necessary to operate the adult foster home.

(6) A license is valid for one year unless revoked or suspended by the Division.

(7) In seeking an initial license, the burden of proof shall be upon the applicant of the adult foster home to establish compliance with ORS 443.705 to 443.825 and these rules.

(8) The Division shall not issue a license to operate an additional adult foster home to a licensee who has failed to achieve and maintain substantial compliance with the rules and regulations while operating his or her existing home or homes.

(9) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the Division may issue a 60-day provisional license to a qualified person if the Division determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the adult foster home for purposes of this rule. A person shall be considered qualified if they are 21 years of age and meet the requirements of a substitute caregiver.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0420

Renewal

(1) At least 60 calendar days prior to the expiration of a license, the Division shall mail a reminder notice and renewal application to the licensed provider. The Division may investigate any information in the renewal application and shall conduct an unannounced inspection of the adult foster home prior to the license renewal.

(2) RENEWAL APPLICATION REQUIREMENTS. The licensee, resident manager, and shift caregivers, as applicable, must submit complete and accurate renewal applications prior to the expiration date to keep the license in effect until the Division takes action. The licensee's renewal application must include:

(a) The Department's license renewal application form;

(b) A \$20 non-refundable fee for each resident based on the license capacity requested;

(c) The Department's Criminal Records Request form completed for each subject individual;

(d) A completed Financial Information Sheet (form SDS 0448A) if the licensee's financial information has changed since the prior application;

(e) A Health History and Physician or Nurse Practitioners' Statement (form SDS 0903) must be updated every third year or sooner if there is reasonable cause for health concerns; and

(f) The Department's supplemental application completed by the resident manager or shift caregivers, as applicable.

(3) LATE RENEWAL REQUIREMENTS (UNLICENSED ADULT FOSTER HOME). The home shall be treated as an unlicensed facility, subject to civil penalties, if the required renewal information and fee are not submitted prior to the expiration date and residents remain in the home. (See OAR 411-050-0487)

(4) The licensee shall be given a copy of the Division's inspection report, (form SDS 517A and, if applicable, form 517B) citing any violations and specifying a time frame for correction, which shall not exceed 30 calendar days from the date of inspection.

(5) If cited violations are not corrected within the time frame specified by the Division, the renewal license may be denied.

(6) The Division shall not renew a license unless the following requirements are met.

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and these rules, including any applicable conditions and other final orders of the Division;

(b) The Division has completed an inspection of the adult foster home;

(c) The Department has completed criminal records checks in accordance with OAR 411-050-0412;

(d) The Division has checked the record of sanctions available from its files; and

ADMINISTRATIVE RULES

(e) The Division has determined that the nursing assistant registry contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse.

(7) In seeking a renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the licensee to establish compliance with ORS 443.705 to 443.825 and these rules.

(8) In proceedings for renewal of a license when an adult foster home has been licensed for 24 or more continuous months, the burden of proof shall be upon the Division to establish noncompliance with ORS 443.705 to 443.825 and these rules.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SSSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2007, f. 6-27-07, cert. ef. 7-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0430

Exceptions

(1) An applicant or licensee may request an exception to the provisions of these rules. The request must be in writing and must include clear and convincing evidence that such an exception:

(a) May not jeopardize the care, health, welfare, or safety of the residents and all of the residents' needs shall be met; and

(b) Must assure that all residents, in addition to other occupants in the home, may be evacuated in three minutes or less.

(2) EXCEPTIONS NOT ALLOWED. Notwithstanding section (1) of this rule, no exception shall be granted from a regulation or provision of these rules pertaining to:

(a) Resident capacity (See OAR 411-050-0408);

(b) Minimum age of licensee, resident manager, shift caregiver, and substitute caregivers (See OAR 411-050-0440);

(c) Standards and practices for care and services (See OAR 411-050-0447); or

(d) Inspections of the facility (See OAR 411-050-0450).

(3) Exceptions may not be granted to any rule that is inconsistent with Oregon Revised Statutes.

(4) Exception requests related to fire and life safety may not be granted by the Division without prior consultation with the State Fire Marshal or the State Fire Marshal's designee.

(5) In making its determination to grant an exception, the Division shall consider the licensee's history of compliance with rules governing adult foster homes or other long-term care facilities for the elderly or physically disabled in Oregon or any other jurisdiction, if appropriate. The Division must determine that the exception is consistent with the intent and purpose of these rules prior to granting an exception. (See OAR 411-050-0401)

(6) An exception is not effective until granted in writing by the Division. Exceptions shall be reviewed pursuant these rules. If applicable, the licensee must reapply for an exception at the time of license renewal or more often if determined necessary by the Division.

(7) At all times the burden of proof shall be on the applicant or licensee to prove that the requirements of this rule have been met.

(8) If an exception to any provision of these rules is denied, the applicant or licensee may request a meeting with the local Division.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SSSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0435

Contracts and Refunds

(1) MEDICAID CONTRACTUAL AGREEMENT.

(a) Applicants or licensees who intend to care for Medicaid eligible clients must enter into a contractual agreement with the Department, sign a completed provider enrollment form and follow Department rules and contract terms.

(b) A valid contractual agreement is not a guarantee that Medicaid eligible individuals shall be placed in an adult foster home.

(c) No Medicaid eligible individuals shall be admitted into an adult foster home unless and until:

(A) The Division has approved a provider enrollment agreement. The Department may not issue a Medicaid payment to a licensee without a current provider enrollment agreement in place;

(B) The client has been screened according to OAR 411-050-0447; and

(C) The Division has authorized the placement. The authorization must be clearly documented in the resident's record with other required admission materials. (See OAR 411-050-0447(2))

(d) The rate of compensation established by the Division is considered payment in full and licensees may not accept additional funds or in-kind payment.

(e) The Department shall not make payment for the date of discharge or for any time period thereafter.

(f) A licensee who elects to provide care for a Medicaid recipient is not required to admit more than one Medicaid recipient. However, if the licensee has a valid Medicaid contract for that home, private-pay residents who become eligible for Medicaid assistance may not be asked to leave solely on the basis of Medicaid eligibility.

(g) Either party may terminate a Medicaid contract according to the terms of the contract.

(h) DEATH OF MEDICAID RESIDENT WITH NO SURVIVING SPOUSE. The licensee must forward all personal incidental funds (PIF) to the Estate Administration Unit, P. O. Box 14021, Salem, Oregon 97309-5024, within 10 business days of the death of a Medicaid resident with no surviving spouse. (See Limits on Estate Claims, OAR 461-135-0835)

(2) PRIVATE CONTRACT. Licensees who care for private-pay residents must enter into a written contract, which is an admission agreement with the resident or person paying for care. A copy of the contract is subject to review by the Division prior to licensure.

(a) The contract must include but not be limited to:

(A) Services to be provided and the rate to be charged. A payment range may not be used unless the contract plainly states when an increase in rate may be expected based on increased care or service needs;

(B) Conditions under which the rates may be changed;

(C) The home's refund policy in instances of a resident's hospitalization, death, discharge, transfer to a nursing facility or other care facility, or voluntary move. The refund policy must be in compliance with OAR 411-050-0435(3);

(D) The home's policies on voluntary moves and whether or not the licensee requires written notification of a resident's intent not to return;

(E) Charges for storage of belongings that remain in the adult foster home for more than 15 calendar days after the resident has left the home, if any; and

(F) A statement indicating that residents are not liable for damages considered normal wear and tear on the adult foster home and its contents.

(b) The licensee may not charge or ask for application fees or non-refundable deposits. Fees to hold a bed are permissible.

(c) The licensee must give a copy of the signed contract to the resident or the resident's representative, which must be documented in the resident's record.

(d) The licensee may not include any illegal or unenforceable provision in a contract with a resident and may not ask or require a resident to waive any of the resident's rights or licensee's liability for negligence.

(e) Thirty calendar days prior to any general rate increases, additions, or other modifications of the rates, the licensee must give written notice of the proposed changes to private-pay residents and their family or other representatives, unless the change is due to the resident's increased care or service needs, and the agreed upon rate schedule in the resident's contract has specified charges for those changes.

(3) REFUNDS.

(a) If a resident dies, the licensee may not retain nor require payment for more than 15 calendar days after the date of the resident's death, or the time specified in the licensee's contract, whichever is less.

(b) If a resident leaves an adult foster home for medical reasons and the resident or the resident's representative indicates the intent to not return, the licensee may not charge the resident for more than 15 calendar days or the time specified in the licensee's contract, whichever is less, after the date the licensee receives notification from the resident or the resident's representative.

(c) The licensee has an obligation to act in good faith to reduce the charge to the resident who has left the home, by seeking a new resident to fill the vacancy.

(d) The licensee must refund any unused advance payments to the resident, or the resident's representative as appropriate, within 30 calendar days after the resident dies or leaves the home.

(e) If the adult foster home closes or the licensee gives written notice for the resident to leave, the licensee waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.

ADMINISTRATIVE RULES

(f) If a resident dies or leaves an adult foster home due to neglect or abuse at the adult foster home that is substantiated by a Department investigator, or due to conditions of imminent danger of life, health, or safety, the licensee may not charge the resident beyond the resident's last day in the home.

(g) Refund policies must also apply to the sections in these rules on moves, transfers, and discharges. (See OAR 411-050-0444(9)(10)(11)).

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSA 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0440

Qualification and Training Requirements for Licensees, Resident Managers and Other Caregivers

(1) LICENSEE REQUIREMENTS. Adult foster home licensees must meet and maintain the requirements specified in this section. Adult foster home applicants and licensees must:

(a) Live in the home that is to be licensed unless there is an approved resident manager, or an exception for shift caregivers has been granted according to section (4) of this rule;

(b) Be at least 21 years of age;

(c) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Division to provide 24-hour care for adults who are physically disabled or elderly. Applicants must have a statement from a physician or other qualified practitioner indicating they are physically, cognitively, and emotionally capable of providing care to residents. Applicants with documented history or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Division of successful treatment, rehabilitation, or references regarding current condition;

(d) Be approved annually in accordance with OAR 411-050-0412 and maintain that approval as required;

(e) Be literate in the English language and demonstrate the ability to communicate in English verbally and in writing with residents and their family members or representatives, emergency personnel (e.g., emergency operator, law enforcement, paramedics, and fire fighters), physicians, nurses, case managers, Division staff, and other professionals involved in the care of residents;

(f) Be able to respond appropriately to emergency situations at all times; and

(g) TRAINING REQUIREMENTS. Applicants and licensees must have the education, experience, and training to meet the requirements of their requested classification. (See OAR 411-050-0443) The following training requirements must be completed prior to obtaining a license:

(A) Potential applicants must attend a Division-approved orientation program offered by the local licensing authority.

(B) Potential applicants must pass the Division's Basic Training Course examination to meet application requirements for licensure. Potential applicants who fail the first examination may take the examination a second time, however successful completion of the examination must take place within 90 calendar days of the end of the Basic Training Course. Potential applicants who fail a second test must retake the Division's Basic Training Course prior to repeating the examination.

(2) FINANCIAL REQUIREMENTS. Applicants and licensees must have the financial ability and maintain sufficient liquid resources to pay the operating costs of the adult foster home for at least two months without solely relying on potential resident income. If an applicant is unable to demonstrate the financial ability and resources required by this section, the Division may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.

(3) RESIDENT MANAGER REQUIREMENTS. Applicants for resident manager must meet and maintain the qualification and training requirements specified in sections (1)(a) through (1)(g)(B) of this rule. An applicant shall not be approved as a resident manager until the Division has verified that all the requirements have been satisfied.

(4) SHIFT CAREGIVER REQUIREMENTS. A written exception is required for the use of shift caregivers. Applicants for shift caregivers must meet and maintain the qualifications outlined in sections (1)(b) through (1)(g)(B) of this rule. An applicant shall not be approved as a shift caregiver until the Division has verified that all the requirements have been satisfied. (See OAR 411-050-0410(4)(o))

(5) EMPLOYMENT APPLICATION. An application for employment in any capacity in an adult foster home must include a question asking whether the applicant has been found to have committed abuse.

(6) TRAINING WITHIN FIRST YEAR OF LICENSING. Licensees, resident managers, and shift caregivers must complete within the first year of obtaining an initial license a Basic First Aid course, a cardiopulmonary resuscitation (CPR) course, and attend Fire and Life Safety training as available. The Division and the Office of the State Fire Marshal or the local fire prevention authority may coordinate the Fire and Life Safety training program.

(7) ANNUAL TRAINING REQUIREMENTS FOR LICENSEES, RESIDENT MANAGERS, AND SHIFT CAREGIVERS FOR LICENSE RENEWAL.

(a) Each year after the first year of licensure, licensees, resident managers, and shift caregivers must complete at least 12 hours of Division-approved training related to the care of adults who are elderly or physically disabled. Up to four of those hours may be related to the business operation of an adult foster home.

(b) Licensees, resident managers, and shift caregivers, as applicable, must maintain their CPR certification.

(c) Registered nurse delegation or consultation, CPR certification and First Aid training, or consultation with an accountant do not count toward the 12 hours of the annual training requirement.

(8) SUBSTITUTE CAREGIVER REQUIREMENTS. Substitute caregivers, or any other person left in charge of residents for any period of time, may not be a resident, and must at a minimum, meet the following qualifications:

(a) Be at least 18 years of age;

(b) Be approved annually in accordance with OAR 411-050-0412 and maintain that approval as required;

(c) Be literate in the English language and demonstrate the ability to communicate in English verbally and in writing with residents, residents' representatives and family members, emergency personnel (e.g., emergency operator, law enforcement, paramedics, and fire fighters), physicians, case managers, Division staff, and other professionals involved in the care of residents;

(d) Be able to respond appropriately to emergency situations at all times;

(e) Have a clear understanding of their job responsibilities, have knowledge of the residents' care plans, and be able to provide the care specified for each resident including appropriate delegation or consultation by a registered nurse;

(f) Possess physical health, mental health, good judgment, and good personal character, including truthfulness, determined necessary by the Division to provide care for adults who are elderly or physically disabled, as determined by reference checks and other sources of information; and

(g) TRAINING REQUIREMENTS FOR SUBSTITUTE CAREGIVERS.

(A) Substitute caregivers must be oriented to the home and to the residents by the licensee or resident manager including:

(i) The location of any fire extinguishers;

(ii) Demonstration of evacuation procedures;

(iii) Location of residents' records;

(iv) Location of telephone numbers for the residents' physicians, the licensee, and other emergency contacts;

(v) Location of medications and key for medication cabinet;

(vi) Introduction to residents;

(vii) Instructions for caring for each resident; and

(viii) Delegation by a registered nurse for nursing tasks if applicable.

(B) A substitute caregiver must complete the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W), and must receive instruction in specific care responsibilities from the licensee or resident manager. The Workbook must be completed by the substitute caregiver without the help of any other person and be considered part of the required orientation to the home and residents.

(C) Substitute caregivers left in charge of an adult foster home for any period that exceeds 48 continuous hours, may be required to meet the education, experience, and training requirements of a resident manager if the licensing authority determines that such qualifications are necessary based on the resident impairment levels in the home.

(D) The Division may grant an exception to the Caregiver Preparatory Training Study Guide and Workbook requirement in section (8)(g)(B) of this rule for a substitute caregiver who holds a current Oregon license as a health care professional such as a physician, registered nurse, or licensed practical nurse who demonstrates the ability to provide adequate care to

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residents based on similar training or at least one year of experience providing direct care to adults who are elderly or physically disabled. A certified nursing assistant (CNA) must complete the Caregiver Preparatory Training Workbook and have a certificate of completion signed by the licensee.

(9) If a licensee is not in compliance with one or more of these rules or the classification for which he or she is licensed, the Division may require, by condition, additional training in the deficient area.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.735 & 443.738

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1995, f. & cert. ef. 3-15-95; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSL 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0443

Classification of Adult Foster Homes

(1) A Class 1, Class 2, or Class 3 adult foster home license shall be issued by the Division based upon the qualifications of the applicant, resident manager, and shift caregivers, as applicable, and compliance with the requirements of these rules.

(a) After receipt of the completed application materials, including the nonrefundable fee, the Division shall investigate the information submitted including any pertinent information received from outside sources.

(b) An applicant may not be issued a license and may not be granted an upgraded license classification if the Division finds unsatisfactory references or a history of noncompliance within the last 24 months.

(c) A Class 1 license may be issued if the applicant and resident manager, as applicable, complete the training requirements outlined in OAR 411-050-0440;

(d) A Class 2 license may be issued if the applicant and resident manager, as applicable, complete the requirements outlined in OAR 411-050-0440. In addition, each must have the equivalent of two years' full time experience in providing direct care to adults who are elderly or physically disabled;

(e) A Class 3 license may be issued if the applicant, resident manager, and shift caregivers, as applicable, complete the training requirements outlined in OAR 411-050-0440 and have a current license as a health care professional in Oregon or possess the following qualifications:

(A) Have the equivalent of three years' full time experience providing direct care to adults who are elderly or physically disabled and require full assistance in four or more of their activities of daily living.

(B) Have references satisfactory to the Division. The applicant must submit current contact information from at least two licensed health care professionals who have direct knowledge of the individual's ability and past experience as a caregiver.

(2) A licensee may be approved to care for ventilator-dependent residents. This approval shall be granted by the Division's Central Office if the licensee, resident manager, and shift caregivers, as applicable, meet the criteria for a Class 3 home according to section (1)(e) of this rule, and comply with the additional requirements for adult foster homes serving ventilator-dependent residents. (See OAR 411-050-0491)

(3) Licensees may only admit or continue to care for residents whose impairment levels are within the classification level of the licensed home.

(a) A licensee with a Class 1 license may only admit residents who need assistance in no more than four activities of daily living.

(b) A licensee with a Class 2 license may provide care for residents who require assistance in all activities of daily living, but require full assistance in no more than three activities of daily living.

(c) A licensee with a Class 3 license may provide care for residents who require full assistance in four or more activities of daily living, but only one resident who requires bed-care or full assistance with all activities of daily living.

(4) A licensee may request in writing an exception if:

(a) A new resident wishes to be admitted whose impairment level exceeds the license classification level;

(b) A current resident becomes more impaired, exceeding the license classification level; or

(c) There is more than one resident in the home who requires full bed-care or full assistance with all activities of daily living.

(5) The Division may grant an exception which allows the resident to be admitted or remain in the adult foster home. The Division shall respond in writing within 30 calendar days' receipt of the written request. The licensee must prove the following criteria are met by clear and convincing evidence that:

(a) It is the choice of the resident to reside in the home;

(b) The licensee is able to give appropriate care and service to the resident in addition to meeting the care and service needs of the other residents;

(c) Additional staff is hired to meet the additional care requirements of all residents in the home as necessary;

(d) Outside resources are available and obtained to meet the resident's care needs;

(e) The exception may not jeopardize the care, health, safety, or welfare of the residents; and

(f) The licensee is able to demonstrate how all occupants may be safely evacuated in three minutes or less if the exception is granted.

(6) A licensee may submit to the Division a written request for a change in license classification. The Division's determination shall be made within 60 calendar days of receipt of the licensee's written request.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.775

Hist.: SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSL 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2007, f. 6-27-07, cert. ef. 7-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0444

Operational Standards

(1) GENERAL PRACTICES.

(a) Licensees must own, rent, or lease the home to be licensed, however the local licensing authority may grant exception to churches, hospitals, non-profit associations, or similar organizations. If a licensee rents or leases the premises where the adult foster home is located, the licensee may not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building in which an adult foster home is located may not allow the owner to interfere with the admission, discharge, or transfer of any resident in the adult foster home unless the owner is a licensee or co-licensee named on the license.

(b) COOPERATION AND ACCESS. The licensee must cooperate with Division personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.

(A) Department personnel have access to all resident and facility records and may conduct private interviews with residents.

(B) The State Long-Term Care Ombudsman has access to all resident and facility records. Deputy Ombudsman and Certified Ombudsman Volunteers have access to facility records and, with written permission from the resident or the resident's legal representative, may have access to resident records. (See OAR 114-005-0030)

(c) Information related to residents must be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, or related to an investigation or sanction action under these rules.

(d) Licensees must be able to arrange or provide for appropriate transportation for residents when needed.

(e) STAFFING STANDARDS. A licensee may not employ a resident manager or shift caregiver who does not meet or exceed the experience and training classification standard for the adult foster home.

(f) If a resident manager, or shift caregiver, changes during the period the license covers, the licensee must notify the Division immediately and identify who shall be providing care. This includes circumstances when the licensee assumes the role as the primary caregiver or shift caregiver when there has been a change in staff, in which case the licensee must submit an updated plan of 24-hour coverage to the Division. Otherwise:

(A) The licensee must submit a request for a change of resident manager, or shift caregiver as applicable, to the Division along with the Department's completed resident manager application form, a completed Health History and Physician or Nurse Practitioner's Statement (form SDS 903), the Department's Criminal Records Request form, and a \$10 non-refundable fee.

(B) Upon a determination by the Division that the applicant meets the requirements of a resident manager, and the applicant has obtained the required training and passed the test, a revised license shall be issued with the name of the new resident manager or shift caregiver. The classification of the home shall be reevaluated based on the qualifications of the new resident manager or shift caregivers, and changed accordingly.

(g) UNEXPECTED AND URGENT STAFFING NEED. If the Division determines an unexpected and urgent staffing need exists, the Division may authorize a person who has not completed the Basic Training or passed the test to act as a resident manager or shift caregiver until training and testing are completed, or for 60 calendar days, whichever period is shorter. The licensee must notify the Division of the situation in writing and satisfactorily demonstrate his or her inability to find a qualified resident

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manager, or shift caregiver as applicable, and that the person is 21 years of age and meets the requirements of a substitute caregiver for the adult foster home.

(h) A licensee is responsible for the supervision, training, and overall conduct of resident managers, other caregivers, family members, and friends when acting within the scope of their employment, duties, or when present in the home.

(i) Sexual relations between residents and any employee of the adult foster home, licensee, or any member of the licensee's household is prohibited unless a pre-existing relationship existed.

(j) A licensee must notify the Division in writing prior to any change of his or her residence or mailing address.

(k) COMMUNICATION.

(A) Applicants for an initial license must obtain an active electronic mail address prior to obtaining a license.

(B) A licensee must notify the Division within 24 hours upon a change in the home's business address for electronic mail and telephone number for the licensee and the adult foster home. (See also section (5) of this rule)

(2) SALE OR LEASE OF EXISTING ADULT FOSTER HOMES AND TRANSFER OF LICENSES.

(a) A license is not transferable and does not apply to any location or person other than the location and the person indicated on the license obtained from the Division.

(b) The licensee must inform real estate agents, prospective buyers, lessees, and transferees in all written communication including advertising and disclosure statements that the license to operate an adult foster home is not transferable and must refer them to the Division for information about licensing.

(c) When a home is to be sold or otherwise transferred or conveyed to another person who intends to operate the home as an adult foster home, that person must apply for and obtain a license from the Division prior to the transfer of operation of the home.

(d) The licensed provider must promptly notify the local Division's licensing program in writing about the licensee's intent to close or intent to convey the adult foster home to another individual. The licensee must provide written notice to the residents and the resident's representatives and case managers as applicable, according to section (12)(a) of this rule.

(e) The licensed provider must inform a person intending to assume operation of an existing adult foster home that residents currently residing in the home must be given at least 30 calendar days' written notice of the licensee's intent to close the adult foster home for the purpose of conveying the home to another person.

(f) The licensee must remain licensed and responsible for the operation of the home and care of the residents in accordance with these rules until the home is closed and the residents have been relocated, or the home is conveyed to a new licensee who is licensed by the Division at a level appropriate to the care needs of the residents in the home.

(3) SANITATION AND SAFETY PRECAUTIONS IN THE ADULT FOSTER HOME.

(a) **COMMUNES AND INCONTINENCE GARMENTS.** If used, commodes must be emptied frequently and cleaned daily, or more frequently if necessary. Incontinence garments must be disposed of in closed containers.

(b) **LAUNDRY.** Soiled linens and clothing must be stored in closed containers prior to laundering in an area that is separate from food storage, kitchen, and dining areas. Pre-wash attention must be given to soiled and wet bed linens. Sheets and pillowcases must be laundered at least weekly and more often if soiled.

(c) **PETS OR OTHER ANIMALS.** Sanitation for household pets and other domestic animals on the premises must be adequate to prevent health hazards. Proof of rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and must not present a danger to residents or guests.

(d) **INFECTION CONTROL.** Standard precautions for infection control must be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(e) **DISPOSAL OF SHARPS.** Precautions must be taken to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in a puncture-resistant, red container for disposal. The puncture-resistant container must be located

as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 through 459.405).

(f) **WATER TEMPERATURE.** Residents who are unable to safely regulate the water temperature must be supervised.

(g) Resident access to or use of swimming or other pools, hot tubs, saunas, or spas on the premises must be supervised. (See also General Conditions, OAR 411-050-0445(1)(f))

(h) There must be current, basic first-aid supplies and a first-aid manual readily available in the home.

(4) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each daily menu must include food from the basic food groups according to the United States Department of Agriculture (USDA's) food pyramid and include fresh fruit and vegetables when in season. Consideration must be given to residents' cultural and ethnic background in food preparation.

(b) A schedule of meal times and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families. Meal substitutions in compliance with section (4)(a) of this rule and with resident approval are acceptable.

(c) There must be no more than a 14-hour span between the evening and morning meals. (Snacks do not substitute for a meal determining the 14-hour span.) Nutritious snacks and liquids must be offered to fulfill each resident's nutritional requirements.

(d) Food may not be used as an inducement to control the behavior of a resident.

(e) Home-canned foods must be processed according to the current guidelines of the Oregon State University Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

(f) Special consideration must be given to residents with chewing difficulties and other eating limitations. Special diets must be followed as prescribed in writing by the resident's physician or nurse practitioner.

(g) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator.

(h) The household utensils, dishes, glassware, and household food may not be stored in resident bedrooms, bathrooms, or living areas.

(i) Meals must be prepared and served in the home where residents live. Payment for meals eaten away from home for the convenience of the licensee (e.g., restaurants, senior meal sites) is the responsibility of the licensee. Meals and snacks, as part of an individual recreational outing by choice, are the responsibility of the resident.

(j) Utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sani-cycle is recommended.

(k) Food preparation areas and equipment, including utensils and appliances, must be clean, free of offensive odors, and in good repair.

(l) Reasonable precautions must be taken to prevent pests (e.g., ants, cockroaches, other insects, and rodents).

(5) TELEPHONE.

(a) The home must have a working, landline telephone with a listed number that is separate from any other number the home has, such as but not limited to internet or fax lines, unless the system includes features that notify the caregiver of an incoming call, or automatically switches to the appropriate mode. If the licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. A licensee may have only one phone line as long as it complies with the requirements of these rules.

(b) The licensee must notify the Division, residents, the residents' families, legal representatives, and case managers, as applicable, of any change in the adult foster home's telephone number within 24 hours of the change.

(c) Restrictions on the use of the telephone by residents are to be specified in the written house policies and may not violate residents' rights. Individual restrictions must be well documented in the care plan.

(d) The licensee must make available and accessible for residents' use a telephone that is in good working order with reasonable accommodation for privacy during telephone conversations. Residents with hearing impairments, to the extent that they may not hear normal telephone conversation, must be provided with a telephone that is amplified with a volume control or is hearing aid compatible.

(6) FACILITY RECORDS.

(a) Facility records must be maintained in the adult foster home and be available for inspection. Facility records include but are not limited to:

(A) Proof that the licensee has the Department's approval as a result of a criminal records check for all subject individuals..

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(B) Proof that the licensee and all other caregivers have met and maintained the minimum qualifications as required by OAR 411-050-0440. The following documentation must be available for review upon request:

(i) Proof of required continuing education according to OAR 411-050-0440. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of classroom hours.

(ii) Completed certificates to document caregivers' completion of the Department's Caregiver Preparatory Training Study Guide and Workbook.

(iii) Documentation of all substitute caregivers' orientation to the adult foster home as required by OAR 411-050-0440(8).

(iv) Employment applications and the names, addresses, and telephone numbers of caregivers employed or used by the licensee.

(C) Copies of notices to the Division pertaining to changes in the resident manager, shift caregiver, or other primary caregiver.

(D) Proof of required vaccinations for animals on the premises.

(E) Well water tests, if required, according to OAR 411-050-0445(2)(a). Test records must be retained for a minimum of three years.

(F) Contracts with the Department including a copy of the adult foster home's private-pay contract.

(G) Records of evacuation drills according to OAR 411-050-0445(5)(o), including the date, time of day, length of time for evacuation of all occupants, names of all residents, and which residents required assistance. The records must be kept at least three years.

(b) **REQUIRED POSTED ITEMS.** The licensee must post the following items in the entryway or other equally prominent place where residents, visitors, and others may easily read them:

(A) The adult foster home license;

(B) Conditions, if any are attached to the license;

(C) A copy of a current floor plan meeting the requirements of OAR 411-050-0445(5)(p);

(D) The Residents' Bill of Rights;

(E) The home's current house policies, which have been reviewed and approved by the Division;

(F) The Division's procedure for making complaints;

(G) The Long-Term Care Ombudsman poster;

(H) The Division's most recent inspection form;

(I) The Division's notice pertaining to the use of any intercoms, monitoring devices, and video cameras that may be used in the adult foster home; and

(J) A weekly menu according to section (4) of this rule.

(c) **POST BY PHONE.** Emergency telephone numbers including the contact number for at least one licensed provider or approved resident manager who has agreed to respond in person in the event of an emergency and an emergency contact number for the licensee, if the licensee does not live in the home. The list must be readily visible and posted by a central telephone in the adult foster home.

(7) **RESIDENT RECORDS.**

(a) An individual resident record must be developed, kept current, and readily accessible on the premises for each individual admitted to the adult foster home. The record must be legible and kept in an organized manner so as to be utilized by staff. The record must contain the following information:

(A) An initial screening assessment;

(B) General information according to OAR 411-050-0447(2)(a);

(C) Documentation on form SDS 913 that the licensee has informed private-pay residents of the availability of a long-term care assessment;

(D) Financial information:

(i) Detailed records and receipts if the licensee manages or handles a resident's money. Resident account record form SDS 713 or other expenditure forms may be used if the licensee manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident and be initialed by the person making the entry. Receipts must document all deposits and purchases of \$5 or more made on behalf of a resident.

(ii) Contracts signed by residents or their representatives who are paying privately may be kept in a separate file but must be made available for inspection by the Division.

(E) Medical and legal information including but not limited to:

(i) Medical history, if available;

(ii) Current physician or nurse practitioner's orders;

(iii) Nursing instructions, delegations, and assessments as applicable;

(iv) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less. (Older records may be stored separately); and

(v) Copies of Guardianship, Conservatorship, Advance Directive for Health Care, Health Care Power of Attorney, and Physician's Order for Life Sustaining Treatment (POLST) documents, as applicable.

(F) A complete and current care plan;

(G) Copies of the current house policies and the current Residents' Bill of Rights, signed and dated by the resident or the resident's representative;

(H) **SIGNIFICANT EVENTS.** A written report (using form SDS 344 or its equivalent) of all significant incidents relating to the health or safety of the resident including how and when the incident occurred, who was involved, what action was taken by the licensee and staff, as applicable, and the outcome to the resident;

(I) **NARRATIVE OF RESIDENT'S PROGRESS.** Narrative entries describing each resident's progress must be documented at least weekly and maintained in each resident's individual record. They must be signed and dated by the person writing them; and

(J) Non-confidential information or correspondence pertaining to the care needs of the resident.

(b) **ACCESS TO RESIDENT RECORDS.**

(A) Resident records must be readily available at the adult foster home to all caregivers working in the home and to representatives of the Department conducting inspections or investigations, as well as to residents, their authorized representatives, or other legally authorized persons.

(B) The State Long-Term Care Ombudsman has access to all resident and facility records. A Deputy Ombudsman and Certified Ombudsman Volunteers have access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's legal representative. (See OAR 114-005-0030)

(c) **RECORD RETENTION.** Records, including any financial records for residents must be kept for a period of three years.

(d) In all other matters pertaining to confidential records and release of information, licensees must be guided by the principles and definitions described in OAR chapter 411, division 005, Privacy of Protected Information. A copy of these rules shall be made available by the Division upon request.

(8) **HOUSE POLICIES.** House policies must be in writing and a copy given to the resident and the resident's family or representative, at the time of admission. House policies established by the licensee must:

(a) Include any restrictions the adult foster home may have on the use of alcohol, tobacco, pets, visiting hours, dietary restrictions, or religious preferences;

(b) Indicate the home's policy regarding the presence and use of legal marijuana on the premises;

(c) Not be in conflict with the Residents' Bill of Rights, the family atmosphere of the home, or any of these rules;

(d) Be reviewed and approved by the Division prior to the issuance of a license and prior to implementing any changes; and

(e) Be posted where they may easily be seen and read by residents and visitors.

(9) **RESIDENT MOVES, TRANSFERS, AND DISCHARGES.** The Department encourages licensees to support a resident's choice to remain in his or her living environment while recognizing that some residents may no longer be appropriate for the adult foster care setting due to safety and medical limitations.

(a) If a resident moves out of an adult foster home for any reason, at the time of move-out the licensee must submit copies of pertinent information from the resident's record to the resident's new place of residence. Pertinent information must include at a minimum:

(A) Copies of current medication sheets and an updated care plan.

(B) Documentation of actions taken by the adult foster home staff, resident, or the resident's representative pertaining to the move, transfer, or discharge.

(b) A copy of the Department's Notice of Resident Move, Transfer, or Discharge form (SDS 901) must be maintained at least three years for all involuntary moves.

(c) Licensees must immediately document in the resident's record voluntary and involuntary moves, transfers, and discharges from the adult foster home, as events take place. (See sections (10) and (11) of this rule)

(10) **VOLUNTARY MOVES, TRANSFERS, AND DISCHARGES.**

(a) If a Department client or a client's representative gives notice of the client's intent to leave the adult foster home, or the client leaves the home abruptly, the licensee must promptly notify the client's case manager.

(b) The licensee must obtain prior authorization from the resident, the resident's legal representative, and case manager, as applicable, prior to:

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(A) Moving voluntarily from one bedroom to another in an adult foster home;

(B) Transferring voluntarily from one adult foster home to another that has a license issued to the same person; or

(C) Moving voluntarily to any other location.

(c) Notifications and authorizations must be documented and available in the resident's record.

(11) INVOLUNTARY MOVES, TRANSFERS, AND DISCHARGES.

(a) **MANDATORY WRITTEN NOTICE.** A resident may not be moved involuntarily from the adult foster home, or to another room within the adult foster home, or transferred to another adult foster home for a temporary stay without a minimum of 30 calendar days' written notice to the resident and the resident's legal representative, guardian, conservator, and case manager, as applicable. The written notice must be on the Department's Notice of Involuntary Move, Transfer, or Discharge of Resident form (SDS 901), be completed by the licensee, and contain the specific reasons the facility is unable to meet the resident's needs, as determined by the facility's evaluation.

(b) Residents may only be moved, transferred, or discharged for the following reasons:

(A) Medical reasons. The resident has a medical or nursing condition that is complex, unstable, or unpredictable and exceeds the level of health services the facility provides as specified in the facility's disclosure information.

(B) The adult foster home is unable to accomplish evacuation of the adult foster home in accordance with OAR 411-050-0445(5)(o).

(C) Welfare of the resident or other residents.

(i) The resident exhibits behavior that poses an imminent danger to self or others including acts that result in the resident's arrest or detention.

(ii) The resident engages in behavior or actions that repeatedly and substantially interfere with the rights, health, or safety of residents or others.

(iii) The resident engages in illegal drug use, or commits a criminal act that causes potential harm to the resident or others.

(D) Failure to make payment for care.

(E) The adult foster home has had its license revoked, not renewed, or it was voluntarily surrendered by the licensee.

(F) The resident engages in the use of medical marijuana in violation of the homes written policies or contrary to Oregon Law under the Oregon Medical Marijuana Act, ORS 475.300 to 475.346.

(c) **LESS THAN 30 DAYS' WRITTEN NOTICE.** A licensee may give less than 30 calendar days' written notice in specific circumstances as identified in paragraphs (A) or (B) below, but must do so as soon as possible using the Department's Notice of Involuntary Move, Transfer, or Discharge of Resident form (SDS 901). This notice must be given to the resident, the resident's representative, guardian, conservator, and case manager, as applicable. A licensee may give less than 30 calendar days' notice ONLY if:

(A) Undue delay in moving the resident would jeopardize the health, safety, or well-being of the resident.

(i) The resident has a medical emergency that requires the immediate care of a level or type that the adult foster home is unable to provide.

(ii) The resident exhibits behavior that poses an immediate danger to self or others.

(B) The resident is hospitalized or is temporarily out of the home, and the licensee determines that he or she is no longer able to meet the needs of the resident.

(d) **WRITTEN NOTICE OF INVOLUNTARY MOVES.** The licensee must complete the Department's Notice of Involuntary Move, Transfer, or Discharge of Resident form (SDS 901). The written notice must include the following information:

(A) The resident's name;

(B) The reason for the proposed move, transfer, or discharge;

(C) The date of the proposed change;

(D) The location to which the resident is going, if known;

(E) A notice of the right to hold an informal conference and hearing;

(F) The name, address, and telephone number of the person giving the notice; and

(G) The date the notice is issued.

(e) **INVOLUNTARY MOVES AND RESIDENT RIGHTS.** An individual who is to be involuntarily moved or refused the right of return or readmission, is entitled to an informal conference and hearing prior to an involuntary move, transfer, or discharge as follows:

(A) **INFORMAL CONFERENCE.** The Division shall hold an informal conference as promptly as possible after the request is received. The Division shall send written notice of the time and place of the conference to the licensee and all persons entitled to the notice. Participants may include the resident, and at the resident's request a family member, case manager, Ombudsman, legal representative of the resident, the licensee, and a representative from an adult foster home association if the licensee requests it. The purpose of the informal conference is to resolve the matter without an administrative hearing. If a resolution is reached at the informal conference, the Division shall document the outcome in writing and no administrative hearing shall be held.

(B) **ADMINISTRATIVE HEARING.** If a resolution is not reached as a result of the informal conference, the resident or resident's representative may request an administrative hearing. If the resident is being moved, transferred, or discharged with less than 30 calendar days' notice according to section (11)(c) of this rule, the hearing must be held within seven business days of the transfer or discharge. The licensee must hold a space available for the resident pending receipt of an administrative order. These administrative rules and ORS 441.605(4) governing transfer notices and hearings for residents of long-term care facilities apply to adult foster homes.

(12) CLOSURE OF ADULT FOSTER HOMES.

(a) Licensees must notify the Division prior to the voluntary closure of a home, proposed sale, or transfer of ownership, and give residents, resident's families, representatives, and case managers for Department clients, as appropriate, a minimum of 30 calendar days' written notice on the Department's form (SDS 901) according to section (11) of this rule.

(b) In circumstances where undue delay might jeopardize the health, safety, or well-being of residents, licensees, or staff, written notice, according to section (11) of this rule, must be given as soon as possible.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

Hist.: SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0445

Facility Standards

In order to qualify for or maintain a license, an adult foster home must comply with the following provisions:

(1) GENERAL CONDITIONS.

(a) Each adult foster home must meet all applicable local business license, zoning, building, and housing codes, and state and local fire and safety regulations for a single family residence.

(b) **INTERIOR AND EXTERIOR PREMISES.** The building and furnishings must be clean and in good repair. The interior and exterior premises must be well maintained and accessible according to the individual needs of the residents. There must be no accumulation of garbage, debris, rubbish, or offensive odors. Walls, ceilings, and floors must be of such character to permit washing, cleaning, or painting, as appropriate.

(c) Adequate lighting, based on the needs of the individual, must be provided in each room, stairway, and exit way. Incandescent light bulbs and fluorescent tubes must be protected with appropriate covers.

(d) **TEMPERATURE.** The heating system must be in working order. Areas of the home used by residents must be maintained at a comfortable temperature. Minimum temperatures during the day will be no less than 68 degrees, no higher than 85 degrees, and no less than 60 degrees during sleeping hours. Variations from the requirements of this rule must be based on resident care needs or preferences and must be addressed in their individual care plan.

(A) During times of extreme summer heat, the licensee must make reasonable effort to keep the residents comfortable using ventilation, fans, or air conditioning. Precautions must be taken to prevent resident exposure to stale, non-circulating air.

(B) If the facility is air-conditioned, the system must be functional and the filters must be cleaned or changed as needed to ensure proper maintenance.

(C) If the licensee is unable to maintain a comfortable temperature for residents during times of extreme summer heat, air conditioning or another cooling system may be required.

(e) **COMMON USE AREAS.** Common use areas for the residents must be accessible to all residents. There must be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the occupants at one time. Common space may not be located in an unfinished basement or garage unless such space was constructed for that purpose or has otherwise been legalized under permit. There may be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common

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living space shall be required for each day care person, room and board occupant, or relative receiving care for remuneration that exceeds the limit of five.

(f) **SAFETY BARRIERS.** Swimming pools, hot tubs, spas, saunas, and stairways, as appropriate, must also be equipped with safety barriers and devices designed to prevent injury.

(g) **VIDEO MONITORS.** Use of video monitors detracts from a home-like environment and licensees may not use them in any area of the home that would violate a resident's privacy unless requested by the resident.

(2) SANITATION.

(a) **NON-MUNICIPAL WATER SOURCE.** A public water supply must be utilized if available. If a non-municipal water source is used, the licensor, a sanitarian, or a technician from a certified water-testing laboratory must collect a sample annually. The water sample must be tested at the licensee's expense for coliform bacteria and action taken to ensure potability. Test records must be retained for three years.

(b) Septic tanks or other non-municipal sewage disposal system must be in good working order.

(c) Garbage and refuse must be suitably stored in readily cleanable, rodent-proof, covered containers, pending weekly removal.

(d) **VENTILATION.** All doors and windows that are used for ventilation must have screens in good condition.

(3) BATHROOMS. Bathrooms must:

(a) Provide individual privacy and have a finished interior with a door which opens to a hall or common-use room. No person must have to walk through another person's bedroom to get to a bathroom;

(b) Have a mirror, a window that opens or other means of ventilation, and a window covering for privacy;

(c) Be clean and free of objectionable odors (See also Commodes and Incontinence Garments, OAR 411-050-0444(3)(a));

(d) Have bathtubs, showers, toilets, and sinks in good repair. A sink must be located near each toilet, and a toilet and sink must be available for the resident's use on each floor with resident rooms. There must be at least one toilet, one sink, and one bathtub or shower for each six household occupants (including residents, day care persons, room and board occupants, licensee, and licensee's family);

(e) Have hot and cold water at each bathtub, shower, and sink in sufficient supply to meet the needs of the residents;

(f) Have nonporous surfaces for shower enclosures. Glass shower doors, if applicable, must be tempered safety glass, otherwise, shower curtains must be clean and in good condition and non-slip floor surfaces must be provided in bathtubs and showers;

(g) Have grab bars for each toilet, bathtub, and shower to be used by resident's for safety, and have barrier-free access to toilet and bathing facilities; and

(h) Have adequate supplies of toilet paper and soap supplied by the licensee. Residents must be provided with individual towels and washcloths, which, are laundered in hot water at least weekly or more often if necessary. Residents must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, roller-dispensed hand towels or paper towels in dispenser must be provided for residents' use.

(4) BEDROOMS.

(a) Bedrooms for all household occupants must:

(A) Have been constructed as a bedroom when the home was built, or remodeled under permit;

(B) Be finished with walls or partitions of standard construction which go from floor to ceiling;

(C) Have a door which opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(D) Be adequately ventilated, heated, and lighted with at least one window that opens which meets fire safety regulations (see section (5)(e) of this rule);

(E) Be at least 70 square feet of usable floor space for one resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright; and

(F) Have no more than two persons per room. (See also OAR 411-050-0408(4) pertaining to children's bedrooms.)

(b) Licensees, resident managers, other caregivers, or family members may not sleep in areas designated as living areas, nor share bedrooms with residents.

(c) There must be an individual bed at least 36 inches wide for each resident consisting of a mattress and springs, or equivalent, in good condition. Cots, rollaways, bunks, trundles, daybeds with restricted access, couches, and folding beds may not be used for residents. Each bed must

have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Waterproof mattress covers must be used for incontinent residents. Day care persons may use a cot or rollaway bed if bedroom space is available which meets the requirements of section (4)(a) of this rule. Resident beds may not be used by day care persons.

(d) Each resident's bedroom must have sufficient separate, private dresser and closet space for his or her clothing and personal effects including hygiene and grooming supplies. Residents must be allowed to keep and use reasonable amounts of personal belongings and have private, secure storage space. Drapes or shades for windows must be in good condition and allow privacy for residents.

(e) Residents who are non-ambulatory, have impaired mobility, or are cognitively impaired must have bedrooms with a safe, second exit to the ground. Residents with bedrooms above or below the ground floor must demonstrate their capability for self-preservation.

(f) Resident bedrooms must be in close enough proximity to the licensee or caregiver in charge to alert him or her to nighttime needs or emergencies, or the bedrooms must be equipped with a call bell or intercom. Intercoms may not violate the resident's right to privacy and must have the capability of being turned off by the resident or at the resident's request.

(5) SAFETY.

(a) Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The home may be inspected for fire safety by the State Fire Marshal's Office at the request of the licensing authority or Division staff using the standards in these rules, as appropriate.

(b) **HEAT SOURCES.** Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves and pellet stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment, including fireplaces, must be in good repair, used properly, and be well maintained according to the recommended maintenance schedule of the manufacturer or a qualified inspector.

(A) Licensees who do not have a permit verifying proper installation of an existing woodstove or pellet stove must have it inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule.

(B) Fireplaces must have approved and listed protective glass screens or metal mesh screens anchored to the top and bottom.

(C) The installation of a non-combustible, heat-resistant safety barrier may be required to be installed 36 inches around woodstoves to prevent residents with ambulation or confusion problems from coming in contact with the stove.

(D) Unvented, portable oil, gas, or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over, shut-off capability may be used when approved by the authority having jurisdiction.

(e) Extension cord wiring and multi-plug adaptors may not be used in place of permanent wiring.

(d) Hardware for all exit doors and interior doors must have simple hardware that may not be locked against exit and must have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more residents who have impaired judgment and are known to wander away from their place of residence must have an activated alarm system to alert a caregiver of an unsupervised exit by a resident.

(e) Bedrooms must have at least one window or exterior door that readily opens from the inside without special tools and which provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height may not be more than 44 inches from the floor level or there must be approved steps or other aids to the window exit that may be used by residents. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee.

(f) **CONSTRUCTION.** Interior and exterior doorways used by residents must be wide enough to accommodate wheelchairs and walkers if used by residents. Interior and exterior stairways must be unobstructed, equipped with handrails, and appropriate to the condition of the residents. (See also section (5)(r) of this rule)

(A) Buildings must be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread of finished materials may not

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exceed Class III (76-200) and smoke density may not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exit way is composed of readily combustible material such as acoustical tile or wood paneling, such material must be treated with an approved flame retardant coating. Exception: Buildings supplied with an approved automatic sprinkler system.

(i) **MANUFACTURED HOMES.** Manufactured home (formerly mobile homes) units must have been built since 1976 and designed for use as a home rather than a travel trailer. The unit must have a manufacturer's label permanently affixed on the unit itself which states the unit meets the requirements of the Department of Housing and Urban Development (HUD). The required label must read as follows:

"As evidenced by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture. See date plate."

(ii) If such a label is not evident and the licensee believes the unit meets the required specifications, the licensee must take the necessary steps to secure and provide verification of compliance from the manufacturer.

(iii) Mobile homes built since 1976 meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(B) **STRUCTURAL CHANGES.** The licensee must notify the Division in writing at least 15 calendar days prior to any remodeling, renovations, or structural changes in the facility that require a building permit. Such activity must comply with building and housing codes and fire and safety regulations applicable to a single-family residence. The licensee must forward to the Division within 30 calendar days of completion copies of all required permits and inspections, an evacuation plan, and a revised floor plan. (See sections (5)(m) and (5)(p) of this rule)

(g) **FIRE EXTINGUISHERS.** At least one fire extinguisher with a minimum classification of 2A-10BC must be in a visible and readily accessible location on each floor, including basements, and be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose.

(h) **SMOKE ALARMS.** Smoke alarms must be installed in accordance with the manufacturer's instructions in each bedroom, in hallways or access areas that adjoin bedrooms, the family room or main living area where residents congregate, any interior designated smoking area, and in basements. In addition, in multi-level homes, smoke alarms must be installed at the top of all stairways. Ceiling placement of smoke alarms is recommended. Alarms must be equipped with a device that warns of low battery when battery operated or with battery back-up if hard wired. Bedrooms used by hearing-impaired occupants who may not hear the sound of a regular smoke alarm must be equipped with an additional smoke alarm that has visual or vibrating capacity.

(i) All smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when actuated, an alarm that is audible in all sleeping rooms. The alarms must be loud enough to wake occupants when all bedroom doors are closed. Intercoms and room monitors may not be used to amplify alarms.

(j) The licensee must maintain smoke alarms and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Division may require the licensee to hard wire the alarms into the electrical system.

(k) **COMBUSTIBLES AND FIREARMS.** Flammables, combustibles, liquids, and other combustible materials must be safely and properly stored in their original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals. Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not accessible to residents. Ammunition must be secured in a locked area separate from the firearms.

(l) **HAZARDOUS MATERIALS.** Cleaning supplies, medical sharps containers, poisons, insecticides, and other hazardous materials must be properly stored in their original, properly labeled containers in a safe area that is not accessible to residents, food preparation and food storage areas, dining areas, and medications.

(m) **EVACUATION PLAN.** An emergency evacuation plan must be developed, and revised as necessary to reflect the current condition of the residents in the home. The plan must be rehearsed with all occupants.

(n) **ORIENTATION TO EMERGENCY PROCEDURES.** Within 24 hours of arrival, any new resident or caregiver must be shown how to

respond to a smoke alarm, shown how to participate in an emergency evacuation drill, and receive an orientation to basic fire safety. New caregivers must also be oriented in how to conduct an evacuation.

(o) **EVACUATION DRILL.** Evacuation drills must be held at least once every 90 calendar days, with at least one per year conducted while the residents are in bed. Records of drills must be maintained according to OAR 411-050-0444(6)(a)(G). Licensees and all other caregivers must be able to demonstrate the ability to evacuate all occupants from the facility to the closest point of safety, which is exterior to and away from the structure, and has access to a public sidewalk or street within three minutes or less. If there are problems in demonstrating this evacuation time, conditions may be applied to the license which include but are not limited to reduced capacity of residents, additional staffing, or increased fire protection. Continued problems shall be grounds for revocation or non-renewal of the license.

(p) **FLOOR PLAN.** The licensee must develop a current and accurate floor plan that indicates:

(A) The size of rooms;

(B) Which rooms are to be resident bedrooms and which are to be caregiver bedrooms;

(C) The location of all the exits on each level of the home, including emergency exits such as windows;

(D) The location of wheelchair ramps, if applicable;

(E) Where the fire extinguishers and smoke alarms are located; and

(F) The planned evacuation routes.

(q) Licensees may not place residents, who are unable to walk without assistance or not capable of self-preservation, in a bedroom on a floor without a second ground level exit. (See also section (4)(e) of this rule)

(r) Stairs must have a riser height of between 6 to 8 inches and tread width of between 8 to 10.5 inches. Lifts or elevators are not an acceptable substitute for resident's capability to ambulate stairs (See also section (5)(f) of this rule).

(s) **EXIT WAYS.** All exit ways must be barrier free and the corridors and hallways must be a minimum of 36 inches wide or as approved by the authority having jurisdiction. Interior doorways used by residents must be wide enough to accommodate wheelchairs and walkers if used by residents. Any bedroom window or door identified as an exit must be free of obstacles that would interfere with evacuation.

(t) **RAMPES.** There must be at least one wheelchair ramp from a minimum of one exterior door if non-ambulatory persons are in residence. Wheelchair ramps must comply with the Americans with Disabilities Act (ADA), have non-skid surfaces, handrails, and have a maximum slope of 1 inch rise in each 12 inches of distance. The maximum rise for any run must be 30 inches. Licensees may need to bring existing ramps into revised compliance if necessary to meet the needs of new residents or current residents with increased care needs.

(u) **EMERGENCY EXITS.** There must be a second safe means of exit from all sleeping rooms. Providers whose sleeping rooms are above the first floor may be required to demonstrate an evacuation drill from that room, using the secondary exit, at the time of licensure, renewal, or inspection.

(v) Adult foster homes located more than five miles distance from the nearest fire station or those of unusual construction characteristics may be required to have a complete fire alarm system meeting the requirements of the National Fire Prevention Association (NFPA) 72 with approved automatic reporting to the local jurisdiction providing fire protection.

(w) There must be at least one plug-in, rechargeable flashlight in good functional condition available on each floor for emergency lighting.

(x) Smoking regulations must be in accordance with the Oregon Indoor Clean Air Act, OAR 333-015-0025 to 333-015-0090. If smoking is allowed in a home, the licensee must adopt house policies that restrict smoking to designated areas. Smoking is prohibited in any bedroom including that of residents, licensee, resident manager, any other caregiver, occupant, or visitor, any room where oxygen is used and anywhere flammable materials are stored. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(y) Providers whose homes are located in areas where there is a danger of natural disasters which require rapid evacuation such as forest fires, flash floods, or tsunami waves must be aware of community resources for evacuation assistance.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738

Hist.: SSD 14-1985, f. 12-31-85 ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88, Sections (8) thru (10) renumbered to 411-050-0447; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDDSD 2-1998(Temp), f. & cert. ef. 2-6-98 thru 8-1-98; SDDSD 6-1998, f. 7-31-98, cert. ef. 8-1-98; SDDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2007, f. 6-27-07, cert. ef. 7-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

ADMINISTRATIVE RULES

411-050-0447

Standards and Practices for Care and Services

(1) SCREENING AND ASSESSMENT.

(a) Prior to admission of a resident, the licensee must conduct and document a screening to determine that the prospective resident's care needs do not exceed the license classification. The screening must evaluate the ability of the prospective resident to evacuate the home within three minutes along with all occupants of the home. The screening must also determine if the licensee and caregiver is able to meet the prospective resident's needs in addition to meeting the needs of the other residents of the home. The screening must include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs, nutritional needs, activities, lifestyle preferences, and other information as needed to assure the prospective resident's care needs will be met.

(b) The screening interview process must include interviews with the prospective resident, the resident's family, prior care providers, and case manager as appropriate. The interview must also include as necessary, any physician, nurse practitioner, registered nurse, pharmacist, therapist, or mental health or other health care professional involved in the care of the resident. A copy of the screening document must be given to the prospective resident or the resident's representative. If the prospective resident becomes a resident in the home, a copy of the screening document must be placed in the resident's record.

(c) The licensee is required to disclose to a prospective resident any house policies that may limit the resident's activities or preferences while living in the adult foster home. Examples include but are not limited to the use of tobacco or alcohol, pets, religious practices, dietary restrictions, and the use of intercoms. Licensed providers must disclose the home's policy regarding the legal presence and use of medical marijuana. (See OAR 411-050-0444(8)(b))

(2) PRIOR TO ADMISSION.

(a) GENERAL INFORMATION. The licensee must obtain and document general information regarding the resident prior to the resident's admission. The information must include names, addresses, and telephone numbers of relatives, significant persons, case managers, and medical or mental health providers. The record must also include the date of admission and, if available, the resident's social security and medical insurance numbers, birth date, prior living facility, and mortuary;

(b) The licensee must have made every effort to obtain physician or nurse practitioner's written orders for medications, treatments, therapies, and special diets, as applicable, prior to the admission of the resident. Any telephone orders must be followed with written orders. A physician, nurse practitioner, or pharmacist review of the resident's preferences for over-the-counter medications and home remedies must also be obtained at that time. The licensee must also obtain and place in the record any medical information available including history of accidents, illnesses, impairments, or mental status that may be pertinent to the resident's care;

(c) The licensee must ask for copies of the following documents, if the resident has them: Advance Directive for Health Care, Physician's Order for Life Sustaining Treatment (POLST), proof of court-appointed guardianship and proof of conservatorship, whichever may be applicable. Copies of these documents must be placed in a prominent place in the resident's record and sent with the resident if the resident is transferred for medical care;

(d) Prior to admission, the licensee must inform the resident or the resident's representative if the home serves Medicaid clients;

(e) The licensee must inform private-pay residents, or their representatives if appropriate, of the availability of long-term care assessment services provided through the Department or a certified assessment program. The licensee must document on the Department's form (SDS 913) that the individual has been advised of their right to receive a long-term care assessment. The facility must maintain a copy of the form in the resident's record and make a copy available to the Division upon request; and

(f) The licensee must discuss the Residents' Bill of Rights, and the home's current house policies with the resident and the resident's representative as appropriate. The discussion must be documented by having the resident sign and date a copy of the house policies, which have been approved by the Division, and the Residents' Bill of Rights, form SDS 305A. Copies of the signed house policies and Residents' Bill of Rights must be maintained in the resident's record.

(3) CARE PLAN.

(a) During the initial 14 calendar days following the resident's admission to the home, the licensee must continue the assessment process which includes documenting the resident's preferences and care needs. The

assessment and care plan must be completed by the licensee and documented within the initial 14-day period. The care plan must describe the resident's needs and preferences, the resident's capabilities, and what assistance the resident requires for various tasks. The care plan must also include by whom, when, and how often care and services shall be provided. Specific information must include:

(A) The resident's ability to perform activities of daily living (ADLs);

(B) Special equipment used by the resident;

(C) Communication needs (Examples may include but are not limited to hearing or vision, such as eraser boards or flash cards, or language barriers such as sign language or non-English speaking);

(D) Night needs;

(E) Medical or physical health problems, including physical disabilities, relevant to care and services;

(F) Cognitive, emotional, or impairments relevant to care and services;

(G) Treatments, procedures, or therapies;

(H) Registered nurse consultation, teaching, delegation, or assessment;

(I) Behavioral interventions;

(J) Social, spiritual, and emotional needs including lifestyle preferences, activities, and significant others involved;

(K) Emergency exiting ability including assistance and equipment needed;

(L) Any use of physical restraints or psychoactive medications; and

(M) Dietary needs and preferences;

(b) The care plan must be reviewed and updated every six months and as the resident's condition changes. A review note with the date and licensee's signature must be documented in the record at the time of the review. If the care plan contains many changes and becomes less legible, a new care plan must be written.

(4) REGISTERED NURSE CONSULTATION.

(a) RN CONSULTATION AND ASSESSMENT. The licensee must obtain a medical professional consultation and assessment to meet the care needs of the resident as required in these rules. A registered nurse consultation must be obtained when a skilled nursing care task, as defined by the Oregon State Board of Nursing, has been ordered by a physician or other qualified practitioner.

(b) The licensee must also request a registered nurse consultation under the following conditions:

(A) When the resident has a health concern or behavioral symptoms that may benefit from a nursing assessment and provider education.

(B) When written parameters are needed to clarify the physician or nurse practitioner's p.r.n. order for medication and treatment. (See section (5)(g) of this rule)

(C) Prior to the use of physical restraints when not assessed, taught, and reassessed, according to section (5)(m) of this rule, by the physician, nurse practitioner, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist.

(D) Prior to the use of new psychoactive medications when not assessed, taught, and reassessed according to section (5)(h) of this rule, by the physician, nurse practitioner, or mental health practitioner, and prior to requesting psychoactive medications to treat behavioral symptoms.

(E) When care procedures have been ordered, which are new for a specific resident, the licensee, or other caregivers.

(c) RN DELEGATIONS. The registered nurse may determine that a nursing care task is to be taught utilizing the delegation process. Delegations are not transferable to other residents or caregivers. (Refer to OAR chapter 851, division 047)

(d) Documentation of nurse consultations, delegations, assessments, and reassessments must be maintained in the resident's record and made available to the Division upon request.

(5) STANDARDS FOR MEDICATIONS, TREATMENTS, AND THERAPIES.

(a) The licensee and caregivers must demonstrate an understanding of each resident's medication administration regimen. The reason the medication is used, medication actions, any specific instructions, and common side effects must be referenced by medication resource material readily available at the facility.

(b) WRITTEN ORDERS. The licensee must obtain and place a signed order in the resident's record for any medications, dietary supplements, treatments, or therapies which have been prescribed by the physician or nurse practitioner. Orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent.

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(A) CHANGED ORDERS. Changes may not be made without a physician or nurse practitioner's order and the physician or nurse practitioner must be notified if a resident refuses to consent to an order. Order changes obtained by telephone must be followed-up with signed orders. Changes in the dosage or frequency of an existing medication require a new pharmacy label. If a new pharmacy label is not obtained, the change must be written on the existing pharmacy label and match the new medication order. (See section (5)(e)(D) of this rule)

(B) DOCUMENTATION. Attempts to obtain the written changes must be documented and readily available for review in the resident's record. Over-the-counter medications or home remedies requested by the resident must be reviewed by the resident's physician, nurse practitioner, or pharmacist as part of developing the initial care plan and at time of care plan review.

(c) HEALTH CARE PROFESSIONAL ORDERS (IMPLEMENTED BY AFH STAFF). The licensee who implements a hospice, home health, or other physician-generated order must:

(A) Have a copy of the hospice or home health document that communicates the written order;

(B) Transcribe the order onto the medication administration record (MAR);

(C) Implement the order as written; and

(D) Include the order on subsequent medical visit reports for the physician or nurse practitioner to review.

(d) HOSPICE AND HOME HEALTH ORDERS (IMPLEMENTED BY NON-AFH STAFF). The licensee who provides adult foster home services to a recipient of hospice or home health services, but who does not implement a hospice or home health-generated order must:

(A) Have a copy of the hospice or home health document that communicates the order; and

(B) Include the order on subsequent medical visit reports for the physician or nurse practitioner to review.

(e) MEDICATION ADMINISTRATION RECORD (MAR). A current, written medication administration record must be kept for each resident and must:

(A) List the name of all medications administered by the caregiver, including over-the-counter medications and prescribed dietary supplements. The record must identify the dosage, route (if other than oral), and the date and time each medication or supplement is to be given;

(B) Identify any treatments and therapies given by the caregiver. The record must indicate the type of treatment or therapy and the time the procedure is to be performed;

(C) Be immediately initialed by the person administering the medication, treatment, or therapy as it is completed. Each medication administration record must contain a legible signature that identifies each set of initials;

(D) Document changed and discontinued orders on the medication administration record immediately showing the date of the change or discontinued order. Changed orders must be written on a new line with a line drawn to the start date and time; and

(E) Document missed or refused medications, treatments, or therapies. If a medication, treatment, or therapy is missed or refused by the resident, the initials of the person administering the medication must be circled, and a brief but complete explanation must be recorded on the back of the medication record.

(f) DISPOSAL OF MEDICATION. Licensees must dispose of all unused, discontinued, outdated, recalled, and contaminated medications according to the requirements of the adult foster home's local DEQ waste management company. A record of the disposal must be readily available in the resident's record. Documentation regarding the disposal must include:

(A) The date of disposal;

(B) Description of medication, (i.e., name, dosage, and amount being disposed);

(C) Name of resident for whom the medication was prescribed;

(D) Reason for disposal;

(E) Method of disposal;

(F) Signature of person disposing of the medication; and

(G) For controlled medications, signature of witness to the disposal according to section (5)(i)(E) of this rule.

(g) P.R.N. MEDICATIONS. Prescription medications ordered to be given "as needed" or "p.r.n." must have specific parameters indicating what the medication is for and specifically when, how much, and how often the medication may be administered. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.

(A) P.R.N. DOCUMENTATION. As needed (p.r.n) medication must be documented on the resident's medication administration record with the time, dose, the reason the medication was given, and the outcome.

(B) P.R.N. ADVANCE SET-UP. As needed (p.r.n.) medications may not be included in any advance set-up of medication.

(h) PSYCHOACTIVE MEDICATIONS.

(A) A licensee may use psychoactive medications to treat a resident's behavioral symptoms only after a consultation with the physician, nurse practitioner, registered nurse, or mental health professional has been obtained. The consultation must identify a probable cause of the behavior and include behavioral and environmental interventions to be used instead of or in addition to medication. The alternative interventions must be tried and the resident's response to them must be documented prior to the use of medication.

(B) Prescriptions or orders for psychoactive medication must specify the dose, frequency of administration, and the circumstance for use, (i.e., specific symptoms). The licensee and all caregivers must be aware of these parameters.

(C) The licensee and all caregivers must know the intended effect of a medication for a particular resident, the common side effects, as well as the circumstances for reporting to the physician or nurse practitioner.

(D) The care plan must identify and describe the behavioral symptoms for which psychoactive medications are being used and list all interventions, including behavioral, environmental, and medication.

(E) A plan for reassessment of psychoactive medication usage must be individually determined for each resident. The reassessment must be completed by the physician or nurse practitioner.

(F) Psychoactive medications must never be given to discipline a resident or for the convenience of the caregivers.

(i) MEDICATION CONTAINERS, STORAGE, AND DISPOSAL.

(A) Each of the resident's medication containers, including bubble packs, must be clearly labeled by the pharmacy. Over-the-counter medication purchased for a specific resident's use must be in the original labeled container and marked with the resident's name.

(B) Over-the-counter medications in stock bottles (with original labels) may be used for multiple residents in the home.

(C) All medications must be kept in a locked, central location, separate from medications of the caregiver or caregiver's family.

(D) Residents may not have access to medications of the licensee, caregivers, or other household members.

(E) Unused, outdated, or discontinued medications may not be kept in the home and must be disposed of. Licensees must contact the local DEQ waste management company in their area for instructions on proper disposal of unused or expired medications. Disposal of all medications may be documented on the medication administration record but must be readily available in the resident's record. Disposal of all controlled substances must be documented and witnessed by at least one other individual who is 18 years of age or older.

(j) ADVANCED SET-UP. The licensee may set up each resident's medications for up to seven calendar days in advance (excluding p.r.n. medications) by using a closed container manufactured for that purpose. If used, each resident must have his or her own container with divisions for the days and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route (if other than oral), and description of the medications. The container must be stored in the locked area with the medications.

(k) SELF-ADMINISTRATION OF MEDICATION. Residents must have a physician or nurse practitioner's written order of approval to self-medicate. Residents able to handle their own medical regimen may keep medications in their own room in a small storage area that may be locked. The licensee must notify the physician or nurse practitioner if the resident show signs of no longer being able to self-medicate safely.

(l) INJECTIONS. Subcutaneous, intramuscular, and intravenous injections may be self-administered by the resident or administered by a relative of the resident, or an Oregon licensed registered nurse (RN). An Oregon licensed practical nurse (LPN) may also give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Oregon State Board of Nursing (OAR chapter 851) may give subcutaneous injections. Intramuscular and intravenous injections may not be delegated.

(m) PHYSICAL RESTRAINTS. Physical restraints may only be used when required to treat a resident's medical symptoms, or to maximize a resident's physical functioning. Licensees and caregivers may use physical

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restraints in adult foster homes only in compliance with these rules, including the Residents' Bill of Rights. (See section (7) of this rule) Prior to the use of any type of physical restraint, the following must be completed:

(A) **ASSESSMENT.** A physician, nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist must complete an assessment, which includes consideration of all other alternatives. If, following the assessment and trial of other measures, it is determined that a restraint is necessary, the least restrictive restraint must be used and as infrequently as possible and the licensee must obtain a written order from the resident's physician, nurse practitioner, or Christian Science practitioner.

(B) **CONSENT.** Physical restraints may not be used without first obtaining written consent of the resident or the resident's legal representative.

(C) **REASSESSMENT.** The frequency for reassessment of the physical restraint's use must be determined based on the recommendations made in the initial assessment. A physician, nurse practitioner, registered nurse, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist may perform the reassessment.

(D) **DOCUMENTATION.** The following must be kept in the resident's record pertaining to physical restraints:

(i) The assessment completed by a medical professional according to section (5)(m)(A) above. The assessment must include:

(I) Documentation of all other alternatives and less restrictive measures which were considered;

(II) Identification of alternative, less restrictive measures that must be used in place of the restraint whenever possible;

(III) A written procedural guidance for correct use of the restraint;

(IV) The frequency and procedures for nighttime use (if applicable); and

(V) Dangers and precautions related to the use of the restraint.

(ii) A written order authorizing the use of the physical restraint from the resident's physician, nurse practitioner, or Christian Science practitioner. The order must include specific parameters including type, circumstances, and duration of the use of the restraint. (P.R.N. orders for restraints are not allowed.);

(iii) Written consent of the resident or the resident's legal representative to use the specific type of physical restraint;

(iv) The use of any type of physical restraint must be recorded on the resident's care plan showing why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive, alternative measures planned during the assessment and cautions for maintaining safety while restrained must also be recorded on the care plan; and

(v) The reassessments completed by a medical professional according to section (5)(m)(C) above.

(E) **DAYTIME USE.** Residents physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 10 minutes and be repositioned, offered toileting, exercised, or provided range-of-motion exercises during this period.

(F) **NIGHTTIME USE.** The use of physical restraints at night is discouraged and must be limited to unusual circumstances. If used, the restraint shall be of the design to allow freedom of movement with safety. The frequency of night monitoring to address resident safety and care needs must be determined in the assessment. Tie restraints of any kind may not be used to keep a resident in bed.

(G) If any physical restraints are used in an adult foster home, they must allow for quick release at all times. Use of restraints may not impede the three-minute evacuation of all household members.

(H) Physical restraints may not be used for the discipline of a resident or for the convenience of the adult foster home.

(6) RESIDENT CARE.

(a) Care and supervision of residents must be in a home-like atmosphere and must be appropriate to the needs, preferences, age, and condition of the individual resident. The training of the licensee and staff must be appropriate to the age, care needs, and condition of the residents. (See OAR 411-050-0440(1)(g)) Additional staff may be required if day care or respite residents are in the home.

(b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider must cooperate with the plan and ensure that it is implemented as instructed.

(c) **NOTIFICATION.** The licensee must notify emergency personnel, the resident's physician, registered nurse, family representative, and case manager, as applicable, under the following circumstances:

(A) **EMERGENCIES (MEDICAL, FIRE, POLICE).** In the event of an emergency, the licensee or other caregiver with the resident at the time

of the event must first call 911 or the appropriate emergency number for their community. This does not apply to residents with medical emergencies who practice Christian Science. Caregivers must follow written instructions from the hospice nurse, if applicable. If the resident has a completed Physician's Orders for Life Sustaining Treatment (POLST) form, or other legal documents such as an Advance Directive for Health Care and Do Not Resuscitate (DNR) orders, copies must be available to the emergency personnel when they arrive.

(B) **HOSPITALIZATION.** In the event the resident is hospitalized.

(C) **HEALTH STATUS CHANGE.** When the resident's health status or physical condition changes.

(D) **DEATH.** Upon the death of the resident.

(d) Licensees shall not inflict, or tolerate to be inflicted, abuse or punishment, financial exploitation, or neglect of residents.

(e) Licensees must exercise reasonable precautions against any conditions that could threaten the health, safety, or welfare of residents.

(f) A qualified caregiver must always be present and available at the home when residents are in the home. A resident may not be left in charge in lieu of a caregiver.

(g) **ACTIVITIES.** Licensees must make available at least six hours of activities per week which are of interest to the residents, not including television and movies. (Information regarding activity resources is available from the Division). Activities must be oriented to individual preferences as indicated in the resident's care plan (See section (3)(a)(J) of this rule). Documentation of each resident's activity participation must be recorded in the resident's records.

(h) **DIRECT INVOLVEMENT OF CAREGIVERS.** Licensees or caregivers must be directly involved with residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between caregivers and residents and among residents, the licensee must demonstrate how regular positive contact shall occur.

(i) **RESIDENT MONEY.** If the licensee manages or handles a resident's money, a separate account record must be maintained in the resident's name. The licensee may not under any circumstances commingle, borrow from, or pledge any funds of a resident. The licensee may not act as a resident's guardian, conservator, trustee, or attorney-in-fact unless related by birth, marriage, or adoption to the resident as follows: parent, child, brother, sister, grandparent, grandchild, aunt, uncle, niece, or nephew. Nothing in this rule shall be construed to prevent a licensee or a licensee's employee from acting as a representative payee for the resident. (See also OAR 411-020-0001(3)(e))

(A) Personal incidental funds (PIF) for Department clients must be used at the discretion of the client for such things as clothing, tobacco, and snacks (not part of daily diet).

(B) Licensees and other caregivers may not accept gifts from residents through undue influence or accept gifts of substantial value. Caregivers and family members of caregivers may not accept gifts of substantial value or loans from the resident or the resident's family. Licensees or other caregivers may not influence, solicit from, or suggest to any of the residents or their representatives that the residents or their representatives give the caregiver or the caregiver's family money or property for any purpose.

(C) The licensee may not subject the resident or the resident's representative to unreasonable rate increases.

(j) Licensees and other caregivers may not loan money to residents.

(7) **RESIDENTS' BILL OF RIGHTS.** Licensees, their families, and employees of the home must guarantee not to violate these rights and to help the residents exercise them. The Residents' Bill of Rights provided by the Division must be explained and a copy given to residents at admission. The Residents' Bill of Rights states each resident has the right to:

(a) Be treated as an adult with respect and dignity;

(b) Be informed of all resident rights and all house policies;

(c) Be encouraged and assisted to exercise constitutional and legal rights, including the right to vote;

(d) Be informed of their medical condition and the right to consent to or refuse treatment;

(e) Receive appropriate care and services and prompt medical care as needed;

(f) Be free from mental and physical abuse;

(g) Complete privacy when receiving treatment or personal care;

(h) Associate and communicate privately with any person of choice and send and receive personal mail unopened;

(i) Have access to and participate in activities of social, religious, and community groups;

(j) Have medical and personal information kept confidential;

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(k) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space;

(l) Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner. Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried. Restraints are not used for discipline or convenience;

(m) Manage their own financial affairs unless legally restricted;

(n) Be free from financial exploitation. The licensee may not charge or ask for application fees or non-refundable deposits or solicit, accept, or receive money or property from a resident other than the amount agreed to for services;

(o) A written agreement regarding services to be provided and the rates to be charged. The licensee must give 30 days' written notice before any change in the rates or the ownership of the home;

(p) Not be transferred or moved out of the adult foster home without 30 calendar days' written notice and an opportunity for a hearing. A licensee may transfer a resident only for medical reasons or for the welfare of the resident or other residents, or for nonpayment;

(q) A safe and secure environment;

(r) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion; and

(s) Make suggestions or complaints without fear of retaliation.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.738, 443.739 & 443.775

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88, Renumbered from 411-050-0445(8) thru (10); SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0455

Abuse Reporting, Complaints, and Notification of Findings

(1) ABUSE REPORTING. Abuse is prohibited. The facility employees and licensee may not permit, aid, or engage in abuse of residents who are under their care. Abuse and suspected abuse must be reported in accordance with OAR 411-020-0020.

(a) STAFF REPORTING. All facility employees must immediately report abuse and suspected abuse to the local SPD office or the local AAA.

(b) LICENSEE REPORTING. The licensee must immediately notify the local SPD office, or the local AAA, of any incident of abuse or suspected abuse, including events overheard or witnessed by observation.

(c) LAW ENFORCEMENT AGENCY. The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (e.g., rape, murder, assault, burglary, kidnapping, theft of controlled substances, etc.).

(2) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The licensee may not retaliate against any resident after the resident or someone acting on the resident's behalf has filed a complaint in any manner including but not limited to:

(A) Increasing or threatening to increase charges;

(B) Decreasing or threatening to decrease services;

(C) Withholding rights or privileges;

(D) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(E) Threatening to harass or abuse a resident in any manner.

(b) Licensees must ensure that any complainant, witness, or employee of a facility may not be subject to retaliation by any adult foster home caregiver, (including their family and friends who may live in or frequent the adult foster home) for making a report, being interviewed about a complaint, or being a witness, including but not limited to restriction of access to the home or a resident or, if an employee, dismissal or harassment.

(c) Anyone who, in good faith, reports abuse or suspected abuse shall have immunity, as approved by law, from any civil liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint.

(3) Immunity under this section does not protect self-reporting licensees from liability for the underlying conduct that is alleged in the complaint.

(4) The Division shall furnish each adult foster home with a Complaint Notice which states the telephone number of the Division, the Long-Term Care Ombudsman, and the procedure for making complaints.

(5) Any person who believes these rules have been violated may file a complaint with the Division.

(6) The Division shall investigate complaints in accordance with the adult protective services rules in OAR chapter 411, division 20.

(7) Immediate protection shall be provided for the residents by the Division, as necessary, regardless of whether the investigative report is completed. The licensee must immediately cease any practice that places a resident at risk of serious harm.

(8) NOTIFICATION OF FINDINGS. The Division, through its local offices, shall provide, by written communication or electronic mail, a copy of the preliminary investigation report to the licensee and complainant within seven business days of the completion of the investigation:

(a) The report shall be accompanied by a notice informing the licensee and complainant of their right to give additional information about the content of the report to the Division's local office within 10 calendar days of receipt of the report.

(b) The Division's local office shall review the responses and reopen the investigation or amend the report if the additional evidence warrants a change.

(c) A copy of the entire report shall be sent to the Division upon completion of the investigation report, whether or not the investigation report concludes the complaint is substantiated or wrongdoing occurred.

(9) Upon completion of substantiation of abuse or rule violation, the Division shall immediately provide written notification of its findings to the licensee.

(a) CONTENT. The written notice shall:

(A) Explain the nature of each allegation;

(B) Include the date and time of each occurrence;

(C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive;

(D) For each substantiated allegation, state whether the violation was abuse or another rule violation;

(E) Include a copy of the complaint investigation report;

(F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 calendar days to provide additional or different information; and

(G) For each allegation, explain the applicable appeal rights available.

(b) APPORTIONMENT. If the Division determines there is substantiated abuse, the Division may determine that the licensee, an individual, or both the licensee and an individual were responsible for abuse. In determining responsibility, The Division shall consider intent, knowledge and ability to control, and adherence to professional standards, as applicable.

(A) LICENSEE RESPONSIBLE. Examples of when the Division shall determine the licensee is responsible for the abuse include but are not limited to the following:

(i) Failure to provide sufficient staffing in accordance with these rules without reasonable effort to correct;

(ii) Failure to check for or act upon relevant information available from a licensing board;

(iii) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff;

(iv) Failure to adequately train, orient, or provide sufficient oversight to staff;

(v) Failure to provide adequate oversight to residents;

(vi) Failure to allow sufficient time to accomplish assigned tasks;

(vii) Failure to provide adequate services;

(viii) Failure to provide adequate equipment or supplies; or

(ix) Failure to follow orders for treatment or medication.

(B) INDIVIDUAL RESPONSIBLE. Examples of when the Division shall determine the individual is responsible shall include but are not limited to:

(i) Intentional acts against a resident including assault, rape, kidnapping, murder, sexual abuse, or verbal or mental abuse;

(ii) Acts contradictory to clear instructions from facility, such as those identified in section (9)(b)(A) of this rule, unless the act is determined by the Division to be the responsibility of the facility;

(iii) Callous disregard for resident rights or safety; or

(iv) Intentional acts against a resident's property (e.g., theft or misuse of funds).

(C) An individual shall not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

(D) APPEAL RIGHTS FOR NURSING ASSISTANT. If a nursing assistant has a finding of substantiated abuse, the nursing assistant has due process in accordance with OAR 411-089-0140(2).

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(c) DISTRIBUTION.

(A) The written notice shall be mailed to:

- (i) The licensee;
- (ii) Any person reported to have committed wrongdoing;
- (iii) The complainant, if known;
- (iv) The Long-term Care Ombudsman; and
- (v) The Division or Type B AAA office.

(B) A copy of the written notice shall be placed in the Division's facility complaint file.

(10) Upon receipt of a notice that substantiates abuse for victims covered by ORS 430.735, the facility must provide written notice of the findings to the individual found to have committed abuse, residents of the facility, the residents' case managers, and the residents' guardians.

(11) Licensees who acquire substantiated complaints pertaining to the health, safety, or welfare of residents may be assessed civil penalties, may have conditions placed on their licenses, or may have their licenses suspended, revoked, or not renewed.

(12) COMPLAINT REPORTS. Copies of all completed complaint reports must be maintained and available to the public at the local Division. Individuals may purchase a photocopy upon requesting an appointment to do so.

(13) The Division may not disclose information that may be used to identify a resident in accordance with OAR 411-020-0030, Confidentiality, and federal HIPAA Privacy Rules. Completed reports placed in the public file must be in compliance with OAR 411-050-0450(10) and:

(a) Protect the privacy of the complainant and the resident. The identity of the person reporting suspected abuse must be confidential and may be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency;

(b) Treat the names of the witnesses as confidential information; and

(c) Clearly designate the final disposition of the complaint.

(A) PENDING COMPLAINT REPORTS. Any information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed.

(B) COMPLAINT REPORTS AND RESPONSES. The investigation reports, including copies of the responses, with confidential information deleted, must be available to the public at the local Division office along with other public information regarding the adult foster home.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 124.050, 124.060, 124.075, 443.740, 443.765, 443.769

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SDSD 11-2001, f. 12-21-01, cert. ef. 1-1-02; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0460

Procedures for Correction of Violations

(1) If, as a result of an inspection or investigation, the Division determines that abuse has occurred, the licensee shall be notified verbally to immediately cease the abusive act. The Division shall follow-up with a written confirmation of the warning to cease the abusive act and shall include notification that further sanctioning may be imposed.

(2) If an inspection or investigation indicates a violation of these rules other than abuse, the Division shall notify the licensee of the violation in writing.

(3) The notice of violation may not include information that may be used to identify a resident in accordance with OAR 411-020-0030, Confidentiality, and federal HIPAA Privacy Rules. Notices placed in the public file must be in compliance with OAR 411-050-0450(10) and must include the following:

(a) A description of each condition that constitutes a violation;

(b) Each rule that has been violated;

(c) A specific time frame for correction, not to exceed 30 calendar days after receipt of the notice. The Division may approve a reasonable time in excess of 30 calendar days if correction of the violation within that time frame is not practical. If the licensee requests more than 30 calendar days to correct the violation, such time will be specified in the licensee's plan of correction and found acceptable by the Division;

(d) Sanctions that may be imposed against the home for failure to correct the violation;

(e) The right of the licensee to contest the violation if an administrative sanction is imposed; and

(f) The right of the licensee to request an exception as provided in OAR 411-050-0430.

(4) At any time after receipt of a notice of violation or an inspection report, the applicant, the licensee, or the Division may request a meeting. The meeting shall be scheduled within 10 business days of a request by either party.

(a) The purpose of the meeting is to discuss the violation stated in the notice of violation, provide information, and to assist the applicant or licensee in achieving compliance with the requirements of these rules.

(b) The request for a meeting by an applicant, licensee, or the Division may not extend any previously established time frame for correction.

(5) The applicant or licensee must notify the Division of correction of the violation no later than the date specified in the notice of violation.

(6) The Division may conduct a reinspection of the home after the date the Division receives the report of compliance, or after the date by which the violation must be corrected as specified in the notice of violation.

(7) For violations that present an imminent danger to the health, safety, or welfare of residents, the licensee must correct the violation and abate the conditions no later than 24 hours after receipt of the notice of violation. The Division may inspect the home after the 24-hour period to determine if the violation has been corrected as specified in the notice of violation.

(8) If residents are in immediate danger, the licensee may be immediately suspended and arrangements made to move the residents.

(9) If, after inspection of a home, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division may institute one or more administrative sanctions.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0465

Administrative Sanctions

(1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

(a) Attachment of conditions to a license;

(b) Civil penalties;

(c) Denial, suspension, revocation, or non-renewal of license; and/or

(d) Reclassification of a license.

(2) If the Division imposes an administrative sanction, the Division shall serve a notice of administrative sanction upon the licensee personally, by certified mail, or by registered mail.

(3) The notice of administrative sanction shall state:

(a) Each sanction imposed;

(b) A short and plain statement of each condition or act that constitutes a violation;

(c) Each statute or rule allegedly violated;

(d) A statement of the licensee's right to a contested case hearing;

(e) A statement of the authority and jurisdiction under which the hearing is to be held;

(f) A statement that the Division's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(g) A statement that the Division shall issue a final order of default if the licensee fails to request a hearing within the specified time.

(4) The licensee shall comply with any final order of the Division.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.765

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0480

Denial, Revocation or Non-Renewal of License

(1) The Division shall deny, revoke, or refuse to renew a license where it finds:

(a) There has been substantial non-compliance with these rules or where there is substantial non-compliance with local codes and ordinances or any other state or federal law or rule applicable to the health and safety of caring for residents in an adult foster home.

(b) The Department has conducted a criminal records check and determined the applicant or licensee is not approved in accordance with OAR 411-050-0412.

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(c) The licensee allows a caregiver, or any other person, excluding the residents, to reside or work in the adult foster home, who has been convicted of potentially disqualifying crimes, and has been denied, or refused to cooperate with the Division in accordance with OAR 411-050-0412.

(d) The applicant or licensee falsely represents that he or she has not been convicted of a crime.

(2) The Division may deny, revoke, or refuse to renew an adult foster home license if the applicant or licensee:

(a) Submits incomplete or untrue information to the Division;

(b) Has a history of, or demonstrates financial insolvency, such as foreclosure, eviction due to failure to pay rent, termination of utility services due to failure to pay bills;

(c) Has a prior denial, suspension, revocation, or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state or county;

(d) Is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked, or refused to be renewed due to abuse or neglect of the residents, or creating a threat to the residents, or failure to possess physical health, mental health, or good personal character within three years preceding the present action, unless the applicant or licensee is able to demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the residents. For purposes of this subsection, an applicant or licensee is "associated with" a person if the applicant or licensee:

(A) Resides with the person;

(B) Employs the person in the foster home;

(C) Receives financial backing from the person for the benefit of the foster home;

(D) Receives managerial assistance from the person for the benefit of the foster home;

(E) Allows the person to have access to the foster home; or

(F) Rents or leases the adult foster home from the person.

(e) Has threatened the health, safety, or welfare of any resident;

(f) Has abused, neglected, or exploited any resident;

(g) Has a medical or psychiatric problem that interferes with the ability to provide foster care;

(h) Has previously been cited for the operation of an unlicensed adult foster home;

(i) Does not possess the good judgment or character deemed necessary by the Division;

(j) Fails to correct a violation within the specified time frame allowed;

(k) Refuses to allow access and inspection;

(l) Fails to comply with a final order of the Division to correct a violation of the rules for which an administrative sanction has been imposed, such as a license condition;

(m) Fails to comply with a final order of the Division imposing an administrative sanction, including the imposition of a civil penalty;

(n) Fails to take or pass the Basic Training Course examination;

(o) Fails to obtain an approved criminal records check for subject individuals according to OAR 411-050-0412 on more than one occasion;

(p) Has previously surrendered a license while under investigation or administrative sanction during the last three years; or

(q) The licensee fails to operate or has failed to operate any other facility licensed by the licensee in substantial compliance with ORS 443.705 to 443.825.

(3) If the license is revoked for the reason of abuse, neglect, or exploitation of a resident, the licensee may request a review in writing within 10 calendar days after receipt of the notice of the revocation. If a request is made, the Division administrator or designee shall review all material relating to the allegation of abuse, neglect, or exploitation and the revocation within 10 calendar days. The administrator or designee shall determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the license shall be restored immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 et seq.

(4) If a license is revoked or not renewed, the licensee shall be entitled to a contested case hearing preceding the effective date of the revocation or non-renewal if the licensee requests a hearing in writing within 21 calendar days after receipt of the notice. If no written request for a timely hearing is received, the Division shall issue the final order by default. The Division may designate its file as the record for purposes of default.

(5) A license subject to revocation shall remain valid during an administrative hearings process even if the hearing and final order are not issued until after the expiration date of the license.

(6) If an initial license is denied for any reason other than the results of a test or inspection, the applicant is entitled to a hearing if the applicant requests a hearing in writing within 60 calendar days after receipt of the denial notice. If no written request for a hearing is timely received, the Division shall issue a final order by default. The Division may designate its file as the record for purposes of default.

(7) If a license is revoked or not renewed, the Division may arrange for residents to move for their protection.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.002 & 443.745

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 2-1987(Temp), f. & ef. 5-5-87; SSD 10-1987, f. 10-29-87, ef. 11-1-87; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0481

Suspension of License

(1) The Division may immediately suspend a license for reason of abuse, neglect, or exploitation of a resident if:

(a) The Division finds that the abuse, neglect, or exploitation causes an immediate threat to any of the residents or

(b) The licensee fails to operate or has failed to operate any other facility licensed by the licensee in substantial compliance with ORS 443.705 to 443.825.

(2) The licensee may request a review of the decision to immediately suspend a license by submitting a request, in writing, within 10 calendar days after receipt of the notice and order of suspension. Within 10 calendar days after receipt of the licensee's request for a review, the Division administrator or designee shall review all material relating to the allegation of abuse, neglect, or exploitation and to the suspension, including any written documentation submitted by the licensee within that time frame. The administrator or designee shall determine, based on a review of the material, whether to sustain the decision. If the administrator or designee does not sustain the decision, the suspension shall be rescinded immediately. The decision of the administrator or designee is subject to a contested case hearing under ORS 183.310 et seq if requested within 90 calendar days.

(3) If a license is suspended, the Division may arrange for residents to move for their protection.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.002 & 443.745

Hist.: SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0487

Civil Penalties

(1) Except as otherwise provided in this rule, civil penalties, not to exceed \$100 per violation to a maximum of \$250 may be assessed for a general violation of these rules.

(2) Mandatory penalties up to \$500, unless otherwise required by law, shall be assessed for falsifying resident or facility records or causing another to do so.

(3) A mandatory penalty of \$250 shall be imposed for failure to have either the licensee, qualified resident manager, qualified shift caregiver, or qualified substitute caregiver on duty 24 hours per day in the adult foster home.

(4) A mandatory penalty of \$250 shall be imposed for dismantling or removing the battery from any required smoke alarm or failing to install any required smoke alarm.

(5) The Division shall impose a civil penalty of not less than \$250 nor more than \$500 on a licensee who admits a resident knowing that the resident's care needs exceed the license classification of the licensee if the admission places the resident or other residents at risk of harm.

(6) Civil penalties up to a maximum of \$1,000 per occurrence may be assessed for substantiated abuse.

(7) If the Division or the Division's designee conducts an investigation or survey and abuse is substantiated and if the abuse resulted in the death, serious injury, rape, or sexual abuse of a resident, the Division shall impose a civil penalty of not less than \$2,500 for each violation.

(a) To impose this civil penalty, the Division shall establish that:

(A) The abuse arose from deliberate or other than accidental action or inaction;

(B) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(C) The person with the finding of abuse had a duty of care toward the resident.

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(b) For the purposes of this civil penalty, the following definitions apply:

(A) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(B) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(C) "Sexual abuse" means any form of nonconsensual sexual contact including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(D) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(8) In addition to any other liability or penalty provided by law, the Division may impose a penalty for any of the following:

(a) Operating the home without a license;

(b) The number of residents exceeds the licensed capacity;

(c) The licensee fails to achieve satisfactory compliance with the requirements of these rules within the time specified, or fails to maintain such compliance;

(d) The home is unable to provide adequate level of care to residents;

(e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the home;

(f) The licensee fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out a resident's care plan; or

(g) The licensee fails to obtain an approved criminal records check from the Department prior to employing that person as a caregiver in the home.

(9) A civil penalty may be imposed for violations other than those involving health, safety, or welfare of a resident if the licensee fails to correct the violation as required when a reasonable time frame for correction was given.

(10) Any civil penalty imposed under this rule becomes due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice must be delivered in person or sent by registered or certified mail and must include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right to request a hearing.

(11) The person to whom the notice is addressed shall have 10 calendar days after receipt of the notice in which to make written application for a hearing. If a written request for a hearing is not timely received, the Division shall issue a final order by default.

(12) All hearings shall be conducted according to the applicable provisions of ORS 183.310 et seq.

(13) When imposing a civil penalty, the Division shall consider the following factors:

(a) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;

(b) Any prior violations of statutes, rules, or orders pertaining to the facility;

(c) The economic and financial conditions of the person incurring the penalty;

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or welfare of one or more residents; and

(e) The degree of harm to residents.

(14) If the person notified fails to request a hearing within the time specified, or if after a hearing the person is found to be in violation of a license, rule, or order, an order may be entered assessing a civil penalty.

(15) Unless the penalty is paid within 10 calendar days after the order becomes final, the order constitutes a judgment and may be recorded by the county clerk which becomes a lien upon the title to any interest in real property owned by that person. The Division may also initiate a notice of revocation for failure to comply with a final order.

(16) Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(17) All penalties recovered under ORS 443.790 to 443.815 shall be paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 443.001, 443.775, 443.790, 443.795, 443.815, 443.825

Hist.: SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDDS 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0490

Zoning for Adult Foster Homes

Adult foster homes shall be subject to applicable sections of ORS 197.660 to 197.670.

Stat. Auth.: ORS 443.705 - 443.795

Stats. Implemented: ORS 196.670, 197.660, & 443.760

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

411-050-0491

Adult Foster Homes for Residents with Ventilator Care

Adult foster homes that provide ventilator care for residents must meet the following requirements.

(1) QUALIFICATIONS. Licensees must meet and maintain compliance with OAR 411-050-0440. In addition:

(a) The applicant or licensee, as applicable, must demonstrate competency in providing care for ventilator-dependent residents.

(b) The applicant or licensee, as applicable, must operate the class 3 home in substantial compliance with these rules for at least one year.

(c) The applicant or licensee, as applicable, must complete Division-approved training pertaining to ventilator-dependent residents and other training as may be required.

(2) OPERATIONAL STANDARDS. Licensees must meet and maintain compliance with OAR 411-050-0444. In addition:

(a) Qualified staff must be awake and available to meet the routine and emergency care and service needs of residents 24 hours a day.

(b) All caregivers must demonstrate competency in providing care for a ventilator-dependent population.

(c) All caregivers must be able to evacuate the residents and any other occupants of the home within three minutes or less.

(d) The applicant and licensee must have a satisfactory system in place to ensure caregivers are alert to the 24-hour needs of residents who may be unable to independently call for assistance.

(e) All caregivers must know how to operate the generator without assistance and be able to demonstrate its operation upon request by the Division.

(3) FACILITY STANDARDS. Licensees must meet and maintain compliance with OAR 411-050-0445. In addition:

(a) The residents' bedrooms must be a minimum of 100 square feet, or larger if necessary, to accommodate the standard requirements of OAR 411-050-0445(4) in addition to equipment and supplies necessary for the care and services needed by individuals with ventilator equipment.

(b) Homes that provide ventilator care for residents must have a functional, emergency back-up generator that is installed by a licensed electrician. The generator must be adequate to maintain electrical service for resident needs until regular service is restored.

(c) The home must have a functional, interconnected smoke alarm system with back-up batteries.

(d) The home must have a functional sprinkler system, and maintenance must be completed as recommended by the manufacturer.

(e) Each resident's bedroom must have a mechanism in place that shall enable residents to summon a caregiver's assistance when needed. The summons must be audible in all areas of the adult foster home.

(4) STANDARDS AND PRACTICES FOR CARE AND SERVICES. Licensees must meet and maintain compliance with OAR 411-050-0447. In addition:

(a) The licensee must conduct and document a thorough screening on the Department's form.

(b) Prior to admitting a resident requiring ventilator care to the adult foster home, the licensee must obtain preauthorization from the Division's Central Office.

(c) The licensee must have a primary care physician identified for each resident being considered for admission.

(d) The licensee must retain the services of a registered nurse to work in the home who is trained in the care of ventilator-dependent individuals. RN services include but are not limited to the provision of medical consultation for and supervision of resident care, skilled nursing care as needed, and delegation of nursing care to caregivers. When the licensed provider is

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an RN, a back-up RN must be identified and available to provide nursing services in the absence of the licensee.

(e) The licensee must develop individual care plans with RN consultants that address the expected frequency of nursing supervision, consultation, and direct service intervention.

(f) The licensee must have physician, RN, and respiratory therapist consultation services available on a 24-hour basis and for in-home visits as appropriate. The licensee must call the appropriate medical professional to attend emergent care needs of the resident.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Residential Care and Assisted Living Facilities.

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Rules Repealed: 411-540-0005(T), 411-054-0016(T), 411-054-0025(T), 411-054-0065(T), 411-054-0105(T), 411-054-0120(T), 411-054-0133(T)

Subject: The Department of Human Services (DHS), Seniors and People with Disabilities Division (SPD) is permanently updating the residential care (RCF) and assisted living facility (ALF) rules in OAR chapter 411, division 054 to comply with the 2009 legislative changes from House Bill 2139 and House Bill 2442 and the 2010 legislative changes from House Bill 3698.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-054-0005

Definitions

For the purpose of these rules, the following definitions apply:

(1) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).

(2) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well being, health, and safety. Activities consist of eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.

(3) "Administrator" means the person who is designated by the licensee that is responsible for the daily operation and maintenance of the facility.

(4) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.

(5) "Applicant" means the person, persons, or entity, required to complete a facility application for license. Applicant includes a sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that owns the residential care or assisted living facility business. Applicant also includes the sole proprietor, each partner in a partnership, and each member in a limited liability company, corporation, or entity that operates the assisted living or residential care facility on behalf of the facility business owner.

(6) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department to perform specific activities in relation to residential care and assisted living facilities including:

(a) Conducting inspections and investigations regarding protective service, abuse, and neglect;

(b) Monitoring; and

(c) Making recommendations to the Division regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.

(7) "Assistant Director" means the assistant director of the Division, or that individual's designee.

(8) "Assisted Living Facility" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside

in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(9) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents. The employee may be either a direct care staff or universal worker as defined in this rule.

(10) "Change of Condition – Short Term" means a change in the resident's health or functioning that is expected to resolve or be reversed with minimal intervention or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(11) "Change of Condition – Significant" means a major deviation from the most recent evaluation that may affect multiple areas of functioning or health that is not expected to be short term and imposes significant risk to the resident. Examples of significant change of condition include but are not limited to:

(a) Broken bones;

(b) Stroke, heart attack, or other acute illness or condition onset;

(c) Unmanaged high blood sugar levels;

(d) Uncontrolled pain;

(e) Fast decline in activities of daily living;

(f) Significant unplanned weight loss;

(g) Pattern of refusing to eat;

(h) Level of consciousness change; and

(i) Pressure ulcers (stage 2 or greater).

(12) "Choice" means a resident has viable options that enable the resident to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.

(13) "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.

(14) "Department" means the Department of Human Services (DHS).

(15) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Creating an environment that allows personal assistance to be provided in privacy, supports dignity as does delivering services in a manner that shows courtesy and respect.

(16) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:

(a) Medication administration;

(b) Resident-focused activities;

(c) Assistance with activities of daily living;

(d) Supervision and support of residents; and

(e) Serving meals, but not meal preparation.

(17) "Directly Supervised" means that a qualified staff member maintains visual contact with the supervised person.

(18) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or manmade that renders the licensee unable to operate the facility or the facility is uninhabitable.

(19) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.

(20) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(21) "Entity" means an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit, including associations, joint stock companies, and insurance companies, a state, or a political subdivision, or instrumentality including a municipal corporation.

(22) "Exception" means a written variance granted by the Division from a regulation or provision of these rules.

(23) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility.

(24) "FPS" means the Facilities Planning and Safety Program within the Department's Public Health Division.

(25) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.

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(26) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.

(27) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.

(28) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(29) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.

(30) "Licensed Nurse" means an Oregon licensed practical or registered nurse.

(31) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

(32) "Managed Risk" means a process by which a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.

(33) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.

(34) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (e.g., heart disease or diabetes).

(a) Modified special diets include but are not limited to:

(A) Small frequent meals;

(B) No added salt;

(C) Reduced or no added sugar; and

(D) Simple textural modifications.

(b) Medically complex diets are not included.

(35) "New Construction" means:

(a) A new building;

(b) An existing building or part of a building that is not currently licensed;

(c) A major alteration to an existing building; or

(d) Additions, conversions, renovations, or remodeling of existing buildings.

(36) "Nursing Care" means the practice of nursing as governed by ORS chapter 678 and OAR chapter 851, division 047.

(37) "Owner" means a person with an ownership interest.

(38) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(39) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(40) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

(41) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(42) "Psychoactive Medications" mean medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive medications include antidepressants, anti-psychotics, sedatives, hypnotics, and anti-anxiety medications.

(43) "Resident" means any person who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.

(44) "Residential Care Facility" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a home-like surrounding where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

(45) "Restraint" means any physical device that the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.

(46) "Retaliation" means to threaten or intimidate, or take an action that is detrimental to a person (e.g., harassment, abuse, coercion, etc.)

(47) "Service Plan" means a written, individualized plan for services developed by a service planning team and the resident, or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.

(48) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036 that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident.

(49) "Services" means supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.

(50) "Subject Individual" means any person 16 years of age or older on whom the Department may conduct a criminal records check and from whom the Department may require fingerprints for the purpose of conducting a national criminal records check.

(a) For the purpose of these rules, subject individual includes:

(A) All applicants, licensees, and operators of a residential care or assisted living facility;

(B) All persons employed or that are receiving training in an assisted living or residential care facility;

(C) Volunteers, if allowed unsupervised access to residents.

(b) For the purpose of these rules, subject individual does not apply to;

(A) Residents and visitors of residents; or

(B) Persons employed by a private business that provides services to residents and is not regulated by the Department.

(51) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.

(52) "These Rules" mean the rules in OAR chapter 411, division 054.

(53) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:

(a) The general public;

(b) A specific population, including residents with dementia or traumatic brain injury; or

(c) Recipients of Medicaid.

(54) "Unit" means an individual living space constructed as a completely private apartment, including living and sleeping space, kitchen area, bathroom, and adequate storage areas.

(55) "Universal Worker" means a facility employee whose assignments include other tasks (e.g., housekeeping, laundry, food service, etc.) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10

411-054-0013

Application for Initial Licensure and License Renewal

(1) APPLICATION. Applicants for initial licensure and license renewal must complete an application on a form provided by the Division. The form must be signed by the applicant's legally authorized representative, dated, contain all information requested by the Division, and be accompanied by the required licensing fee.

(a) Applicants must provide all information and documentation as required by the Division including but not limited to identity financial interest of any person, including stockholders who have an incident of ownership in the applicant representing an interest of 10 percent or more, or 10 percent of a lease agreement for the facility.

(b) If the owner of the assisted living or residential care facility is a different entity from the operator or management company of the facility, both the operator and the owner must complete an application for licensure. Only one license fee is required.

(c) The application shall require the identification of any individual with 10 percent incident of ownership that has ever been convicted of a crime associated with the operation of a long-term, community-based, or health care facility or agency under federal law or the laws of any state.

(d) The application shall require the identification of all states where the applicant, or person having a 10 percent or more incident of ownership in the facility, currently or previously has been licensed as owner or opera-

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tor of a long-term, community-based, or health care facility or agency under the laws of any state including any facility, currently or previously owned or operated, that had its license denied or revoked or received notice of the same under the laws of any state.

(e) The Division may deny, revoke, or refuse to renew the license if the applicant fails to provide complete and accurate information on the application and the Division concludes that the missing or corrected information is needed to determine if a license should be granted.

(f) Each application for a new license (excludes license renewal) must include a completed and signed credit history and criminal records request form for the applicant and for each person with 10 percent incident of ownership in the applicant.

(g) The Division may require financial information as stated in OAR 411-054-0016(3) (New Applicant Qualifications), when considering an applicant's request for renewal of a license.

(h) Applicants must provide other information and documentation as the Division may reasonably require for proper administration of these rules, including but not limited to information about ownership interest in other business enterprises, if relevant.

(2) LICENSE RENEWAL. Application for a license renewal must be made at least 45 days prior to the expiration date of the existing license. Filing of an application for renewal and payment of the required non-refundable fee before the date of expiration extends the effective date of expiration until the Division takes action upon such application.

(a) The Division shall refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules or if the State Fire Marshal or authorized representative has given notice of noncompliance.

(b) An applicant for license renewal must provide the Division with a completed criminal records request form for the applicant and for each person with incident of ownership in the applicant when required by the Division.

(c) A building inspection may be requested at the Division's discretion. The Division may require physical improvements if the health or safety of residents is negatively impacted.

(3) DEMONSTRATED CAPABILITY.

(a) Prior to issuance of a license or a license renewal, the applicant must demonstrate to the satisfaction of the Division that the applicant is capable of providing care in a manner consistent with the requirements of these rules.

(b) The Division may consider the background and qualifications of any person owning 10 percent or more interest in the facility operation when determining whether an applicant may be licensed.

(c) The Division may consider the applicant's history of compliance with Division rules and orders including the history of compliance of each person with a 10 percent or more incident of ownership in the applicant.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10

411-054-0016

New Applicant Qualifications

For the purpose of this rule, "applicant" means each person, as defined in ORS 442.015, who holds 10 percent or greater incident of ownership in the facility. Applicants for licensure (excluding license renewal but including all changes of ownership, management, or operator) must meet the following criteria:

(1) CRIMINAL RECORDS. Each applicant may not have convictions of any of the crimes listed in OAR 407-007-0275 and must complete a criminal records check conducted by the Department in accordance with OAR 407-007-0200 to 407-007-0370.

(2) PERFORMANCE HISTORY. The Division shall consider an applicant's performance history, including repeat sanctions or rule violations, before issuing a license.

(a) Each applicant must be free of incident of ownership history in any facility in Oregon that provides or provided (at the time of ownership) care to children, elderly, ill, or individuals with disabilities that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years.

(b) Applicants must be free of incident of ownership history in any facility in any state that had its license or certification involuntarily suspended or voluntarily terminated during any state or federal sanction process during the past five years.

(c) Failure to provide accurate information or demonstrate required performance history could result in the Division's denial of a license.

(3) FINANCIAL HISTORY. Each applicant must:

(a) Be free of incident of ownership history in any facility or business that failed to reimburse any state for Medicaid overpayments or civil penalties during the past five years.

(b) Be free of incident of ownership history in any facility or business that failed to compensate employees or pay worker's compensation, food supplies, utilities, or other costs necessary for facility operation during the past five years.

(c) Have a record of good credit as evidenced by a credit check done by the Division.

(d) Submit proof of fiscal responsibility, including an auditor's certified financial statement, and other verifiable documentary evidence of fiscal solvency documenting that the prospective licensee has sufficient resources to operate the facility for 60 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the facility for 45 days. Anticipated Medicaid income is not considered "liquid assets," but may be considered "financial resources." Liquid assets may be demonstrated by:

(A) An unencumbered line of credit;

(B) A performance bond; or

(C) Any other method satisfactory to the Division.

(e) Provide a pro forma (revenues, expenditures, and resident days) by month for the first 12 months of operation of the facility and demonstrate the ability to cover any cash flow problems identified by the pro forma.

(4) EXPERIENCE. If an applicant does not have experience in the management of nursing facilities, assisted living, or residential care, the applicant must employ the services of a consultant or management company with experience in the provision of assisted living or residential care for a period of at least six months. The consultant and the terms and length of employment are subject to the approval of the Division.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455, 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10

411-054-0025

Facility Administration

(1) FACILITY OPERATION.

(a) The licensee is responsible for the operation of the facility and the quality of care rendered in the facility.

(b) The licensee is responsible for the supervision, training, and overall conduct of staff when acting within the scope of their employment duties.

(c) The licensee is responsible for obtaining criminal records checks on all subject individuals.

(A) Criminal records checks must be submitted to the Department for a criminal fitness determination on all subject individuals in accordance with OAR chapter 407-007-0200 to 407-007-0370, including prior to a subject individual's change in position (for example, change from caregiver to med aide).

(B) PORTABILITY OF CRIMINAL RECORDS CHECK APPROVAL. A subject individual may be approved to work in multiple facilities under the same operational entity. The Department's Background Check Request form must be completed by the subject individual to show intent to work at various assisted living or residential care facilities.

(d) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.

(2) CRIMINAL RECORDS CHECK REQUIREMENTS.

(a) On or after July 28, 2009, no person may be a licensee, or employed in any capacity in a residential care or assisted living facility, who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Subject individuals who are employees and hired prior to July 28, 2009 are exempt from subsection (a) of this section provided that the employee remains in the same position working for the same employer after July 28, 2009. This exemption is not applicable to licensees.

(3) EMPLOYMENT APPLICATION. An application for employment in any capacity at a facility must include a question asking whether the applicant has been found to have committed abuse. The licensee must check all potential employees against the Oregon State Board of Nursing and inquire whether the person is licensed or certified by the Board and whether there has been any disciplinary action by the Board against the person or any substantiated abuse findings against a nursing assistant.

(4) Reasonable precautions must be exercised against any condition that could threaten the health, safety, or welfare of residents.

(5) REQUIRED POSTINGS. Required postings must be posted in a routinely accessible and conspicuous location to residents and visitors and

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be available for inspection at all times. The licensee is responsible for posting the following:

- (a) Facility license;
- (b) The name of the administrator or designee in charge. The designee in charge must be posted by shift or whenever the administrator is out of the facility;
- (c) The current facility-staffing plan;
- (d) A copy of the most recent survey and plan of correction as applicable; and
- (e) Other notices relevant to residents or visitors required by state or federal law.

(6) **NOTIFICATION.** The facility must notify Division Central Office immediately by telephone, fax, or email, (if telephone communication is used the facility must follow-up within 72 hours by written or electronic confirmation) of the following:

- (a) Any change of the administrator of record;
- (b) Severe interruption of physical plant services in which the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food;
- (c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable;
- (d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility;
- (e) Unusual resident death or suicide; or
- (f) A resident who has eloped from the facility and has not been found within 24 hours.

(7) **POLICIES AND PROCEDURES.** The facility must develop and implement written policies and procedures that promote high quality services, health and safety for residents, and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a homelike environment.

(a) The facility must develop and implement a policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in their daily living.

(b) The facility must develop and implement a written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.

(c) The facility must develop and implement effective methods of responding to and resolving resident complaints.

(d) The facility must develop all additional requirements for written policies and procedures as established in OAR 411-054-0012(Requirements for New Construction or Initial Licensure), OAR 411-054-0040 (Change of Condition and Monitoring), OAR 411-054-0045 (Resident Health Services), and OAR 411-054-0085 (Refunds and Financial Management).

(e) The facility must develop and implement a policy on smoking.

(A) The smoking policy must be in accordance with:

- (i) The Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;
- (ii) The rules in OAR chapter 333, division 015; and
- (iii) Any other applicable state and local laws.

(B) The facility may designate itself as non-smoking.

(8) **RECORDS.** The facility must ensure the preparation, completeness, accuracy, and preservation of resident records.

(a) The facility must develop and implement a written policy that prohibits the falsification of records.

(b) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.

(c) Upon closure of a facility the licensee must provide the Division with written notification of the location of all records.

(9) **QUALITY IMPROVEMENT PROGRAM.** The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes, and resident satisfaction.

(10) **DISCLOSURE - RESIDENCY AGREEMENT.** The facility must provide a Division designated Uniform Disclosure Statement (form SDS 9098A) to each person who requests information about the facility. The residency agreement and the disclosure information described in subsection (a) of this section are required to be provided to all potential residents prior to move-in. All disclosure information and residency agreements must be written in compliance with these rules.

(a) The residency agreement and the following disclosure information must be reviewed by the Division prior to distribution and must include the following:

(A) Terms of occupancy, including policy on the possession of firearms and ammunition;

(B) Payment provisions including the basic rental rate and what it includes, cost of additional services, billing method, payment system and due dates, deposits, and non-refundable fees, if applicable;

(C) The method for evaluating a resident's service needs and assessing the costs for the services provided;

(D) Policy for increases, additions, or changes to the rate structure. Disclosure must address the minimum requirement of 30 days prior written notice of any facility-wide increases or changes and the requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan;

(E) Refund and proration conditions;

(F) A description of the scope of resident services available according to OAR 411-054-0030;

(G) A description of the service planning process;

(H) Additional available services;

(I) The philosophy of how health care and ADL services are provided to the resident;

(J) Resident rights and responsibilities;

(K) The facility system for packaging medications including the option for residents to choose a pharmacy that meets the requirements of ORS 443.437;

(L) Criteria, actions, circumstances, or conditions that may result in a move-out notification or intra-facility move;

(M) Resident's rights pertaining to notification of involuntary move-out;

(N) Notice that the Department has the authority to examine resident records as part of the evaluation of the facility; and

(O) Staffing plan.

(b) The facility may not include any provision in the residency agreement or disclosure information that is in conflict with these rules and may not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence;

(c) The facility must retain a copy of the original and any subsequent signed and dated residency agreements and must provide copies to the resident or to the resident's designated representative; and

(d) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed or mailed to the Division before distribution.

Stat. Auth.: ORS 181.534, 410.070, 443.004 & 443.450

Stats. Implemented: ORS 181.534, 443.004, 443.400 - 443.455 & 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 1-2010(Temp), f. & cert. ef. 3-11-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10

411-054-0065

Administrator Qualifications and Requirements

(1) **FULL-TIME ADMINISTRATOR.** Each licensed residential care and assisted living facility must employ a full-time administrator. The administrator must be scheduled to be on-site in the facility at least 40 hours per week.

(2) **ADMINISTRATOR QUALIFICATIONS.** The administrator must:

(a) Be at least 21 years of age;

(b) Possess a high school diploma or equivalent; and

(A) Have at least two years professional or management experience that has occurred within the last five years, in a health or social service related field or program, or have a combination of experience and education; or

(B) Possess an accredited Bachelors Degree in a health or social service related field.

(3) **ADMINISTRATOR REQUIREMENTS.**

(a) Facility administrators must meet the following training requirements prior to employment:

(A) Complete a Division approved classroom administrator training program of at least 40 hours;

(B) Complete a Division approved administrator training program that includes both a classroom training of less than 40 hours and a Division approved 40-hour internship program with a Division approved administrator; or

(C) Complete another Division approved administrator training program.

(b) **CONTINUING EDUCATION.** Administrators must have 20 hours of documented Division approved continuing education credits each year. The approved administrator-training program fulfills the 20-hour continuing education requirement for the first year.

(c) Persons who have met Division approved training program requirements but have been absent from an administrator position for five

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years or less, do not have to re-take the administrator training but must provide evidence of 20 hours of continuing education annually.

(d) Prior to employment as administrator of a facility, persons must complete the criminal records check requirements of OAR 407-007-0200 to 407-007-0370 and comply with the tuberculosis screening recommendations in OAR 333-019-0041. An administrator of a facility may not have convictions of any of the crimes described in OAR 407-007-0275.

(e) ADMINISTRATOR REFERENCE SUMMARY. Newly hired administrators are responsible for the completion of form SDS 0566, Administrator Reference Summary, and are required to fax the completed form to the Division upon hire. The Division may reject a form that has been falsified or is incomplete.

(f) DESIGNEE. The administrator must appoint a staff member as designee to oversee the operation of the facility in the administrator's absence. The administrator or a designee must be in charge on site at all times and ensure there are sufficient, qualified staff and that the care, health, and safety needs of the residents are met at all times.

(4) ADMINISTRATOR TRAINING COURSE STANDARDS.

(a) The training curriculum for the administrator training must be approved by the Division and shall be re-evaluated by the Division at periodic intervals.

(b) Individuals, companies, or organizations providing the administrator training course must be approved by the Division. The Division may withdraw approval under the following conditions:

- (A) Failure to follow Division approved curriculum;
- (B) The trainer demonstrates lack of competency in training;
- (C) There is insufficient frequency of training to meet the need; or
- (D) Facilities owned or operated by the training entity have a pattern of substantial non-compliance with these rules.

(c) Approved training must be open and available to all applicants and may not be used to orient trainees to a specific company's management or operating procedures.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10

411-054-0105

Inspections and Investigations

(1) The facility must cooperate with Division personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.

(a) Records must be made available to the Division upon request. Division personnel must have access to all resident and facility records and may conduct private interviews with residents. Failure to comply with this requirement shall result in regulatory action.

(b) The State Long Term Care Ombudsman must have access to all resident and facility records that relate to an investigation. Certified Ombudsman volunteers may have access to facility records that relate to an investigation and access to resident records with written permission from the resident or guardian.

(c) The State Fire Marshal or authorized representative must be permitted access to the facility and records pertinent to resident evacuation and fire safety.

(2) Staff of the Division shall visit and inspect every facility at least but not limited to once every two years to determine whether the facility is maintained and operated in accordance with these rules.

(a) Facilities not in compliance with these rules must submit, within ten days of receipt of the inspection report, a plan of correction that satisfies the Division.

(b) The Division may impose sanctions for failure to comply with these rules.

(3) Division staff may consult with and advise the facility administrator concerning methods of care, records, housing, equipment, and other areas of operation.

(4) A copy of the most current inspection report and any conditions placed upon the license must be posted with the facility's license in public view near the main entrance to the facility.

(5) COMPLAINT INVESTIGATIONS. The Division, through the Division's local offices, shall provide, by written communication or email, a copy of the investigation report to the licensee and complainant within seven working days of the completion of the investigation.

(a) The investigation report shall be accompanied by a notice informing the licensee of the right to provide additional information about the content of the report to the local office within 10 calendar days of receipt of the report.

(b) The Division's local office must review the licensee's responses and reopen the investigation or amend the report if the additional evidence warrants a change.

(6) ABUSE OR RULE VIOLATION. Upon completion of substantiation of abuse or rule violation, the Division shall immediately provide written notification to the facility.

(a) WRITTEN NOTICE. The written notice shall:

- (A) Explain the nature of each allegation;
- (B) Include the date and time of each occurrence;
- (C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive;
- (D) For each substantiated allegation, state whether the violation was abuse or another rule violation;
- (E) Include a copy of the complaint investigation report;
- (F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 days to provide additional or different information; and

(G) For each allegation, explain the applicable appeal rights available.

(b) APPORTIONMENT. If the Division determines there is substantiated abuse, the Division may determine that the facility, an individual, or both the facility and an individual are responsible for the abuse. In determining responsibility, the Division shall consider intent, knowledge and ability to control, and adherence to professional standards as applicable.

(A) FACILITY. Examples of when the Division shall determine the facility is responsible for the abuse include but are not limited to:

- (i) Failure to provide minimum staffing in accordance with these rules without reasonable effort to correct;
- (ii) Failure to check for or act upon relevant information available from a licensing board;
- (iii) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff;
- (iv) Failure to adequately provide oversight, training, or orientation of staff;
- (v) Failure to allow sufficient time to accomplish assigned tasks;
- (vi) Failure to provide adequate services;
- (vii) Failure to provide adequate equipment or supplies; or
- (viii) Failure to follow orders for treatment or medication.

(B) INDIVIDUAL. Examples of when the Division shall determine the individual is responsible for the abuse include but are not limited to:

- (i) Intentional acts against a resident including assault, rape, kidnapping, murder, sexual abuse, or verbal or mental abuse;
- (ii) Acts contradictory to clear instructions from the facility, unless the act is determined by the Division to be caused by the facility as identified in paragraph (A) above;
- (iii) Callous disregard for resident rights or safety; or
- (iv) Intentional acts against a resident's property (e.g., theft, misuse of funds).

(C) An individual may not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

(c) DUE PROCESS RIGHTS.

(A) NON-NURSING ASSISTANT. The written notice in cases of substantiated abuse by a person other than a nursing assistant shall explain the person's right to:

- (i) File a petition for reconsideration pursuant to OAR 137-004-0080; and
- (ii) Petition for judicial review pursuant to ORS 183.484.

(B) NURSING ASSISTANT. The written notice in cases of substantiated abuse by a nursing assistant shall explain:

- (i) The Division's intent to enter the finding of abuse into the Nursing Assistant Registry following the procedure set out in OAR 411-089-0140; and
- (ii) The nursing assistant's right to provide additional information and request a contested case hearing as provided in OAR 411-089-0140.

(C) FACILITY. The written notice shall advise the facility of the facility's due process rights as appropriate.

(d) DISTRIBUTION.

(A) The written notice shall be mailed to the facility, any person reported to have committed wrongdoing, the complainant (if known), and the Division or Type B AAA office; and

(B) A copy of the written notice shall be placed in the Division's facility complaint file.

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(7) Upon receipt of a notice of abuse for victims covered by ORS 430.735, the facility shall provide written notice of the findings to the person found to have committed abuse, the residents of the facility, the residents' case managers, and the residents' guardians.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10

411-054-0120 Civil Penalties

(1) For purposes of imposing civil penalties, facilities licensed under ORS 443.400 to 443.455 and subsection (2) of ORS 443.991 are considered to be long term care facilities subject to ORS 441.705 to 441.745.

(2) For purposes of this rule, "person" means a licensee under ORS 443.420 or a person who the Assistant Director of the Division finds shall be so licensed but is not, but does not include any employee of such licensee or person.

(3) For purposes of this rule, "resident rights" means that each resident must be assured the same civil and human rights accorded to other citizens as described in OAR 411 054 0027.

(4) The Division shall exercise the powers under ORS 441.705 to 441.745 and thereby issues the following schedule of penalties applicable to residential care and assisted living facilities:

(a) A Class I violation exists when there is non-compliance involving direct resident care or feeding, adequate staff, or sanitation involving direct resident care or resident rights.

(b) The Division shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse that resulted in the death, serious injury, rape, or sexual abuse of a resident. The civil penalty may not exceed \$15,000 in any 90-day period.

(A) To impose this civil penalty, the Division shall establish that:

(i) The abuse arose from deliberate or other than accidental action or inaction;

(ii) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(iii) The person substantiated for the abuse had a duty of care toward the resident.

(B) For the purposes of this civil penalty, the following definitions apply:

(i) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(ii) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(iii) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(iv) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(c) A Class II violation exists when there is non-compliance with the license requirements relating to a license required, the license requirements relating to administrative management, or personal services (care) and activities. Class II violations may result in imposition of a fine for violations found on two consecutive monitorings of the facility.

(d) A Class III violation exists when there is non-compliance with the license requirements relating to building requirements and resident furnishings. Class III violations may result in imposition of a fine for violations found on two consecutive monitorings of the facility.

(5) For purposes of this rule, a monitoring occurs when a residential care or assisted living facility is surveyed, inspected, or investigated by an employee or designee of the Division or an employee or designee of the State Fire Marshal.

(6) In imposing a penalty pursuant to section (4) of this rule, the Assistant Director of the Division shall consider the following factors:

(a) The past history of the person 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 residential care or assisted living facilities;

(c) The economic and financial conditions of the person incurring the penalty; and

(d) The immediacy and extent that the violation threatens the health, safety, and well being of residents.

(7) Any civil penalty imposed under ORS 443.455 and 441.710 shall become due and payable when the person incurring the penalty receives a notice in writing from the Assistant Director of the Division. The notice shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the party's right to request a hearing.

(8) The person to whom the notice is addressed shall have 10 days from the date of postmark to make written application for a hearing before the Division.

(9) All hearings shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(10) If the person notified fails to request a hearing within 10 days, an order may be entered by the Division assessing a civil penalty.

(11) If, after a hearing, the person 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 Division assessing a civil penalty.

(12) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Assistant Director of the Division considers proper and consistent with the public health and safety.

(13) 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 sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.005 to 18.428. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(14) A violation of any general order or final order pertaining to a residential care or assisted living facility issued by the Assistant Director of the Division is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(15) Judicial review of civil penalties imposed under ORS 441.710 shall be as provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(16) All penalties recovered under ORS 443.455 and 441.710 to 441.740 shall be paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10

411-054-0133

Temporary Manager

(1) APPOINTMENT. The Division, with the consent of the licensee, may appoint a temporary manager to assume control of the day-to-day operation of the facility in accordance with Oregon Laws 2009, chapter 539, sections 14 through 18. The appointment may be for a period not to exceed six months.

(2) CRITERIA. A temporary manager may be appointed if the Division determines that the health or safety of residents in the facility are, or in the immediate future shall be, in jeopardy based upon:

(a) The licensee's unwillingness or inability to comply with Department rules in the operation of the facility;

(b) The imminent insolvency of the facility;

(c) The Division's revocation or suspension of the license of the facility; or

(d) The Division's determination that the licensee intends to cease operations and to close the facility without adequate arrangements for the relocation of the residents.

(3) DUTIES AND POWERS. The temporary manager has all of the duties and powers, as agreed upon between the Division and the licensee that are necessary to ensure the safety and well-being of the residents and the continued operation of the facility.

(4) QUALIFICATIONS. In order to qualify for appointment as temporary manager, the prospective appointee must:

(a) Be, or employ a person who is, qualified to serve as administrator for the type of facility being served;

(b) Be familiar with the Division's rules for the operation of the facility to be served;

(c) Be familiar with the needs of the resident population in the facility to be served; and

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(d) Have a demonstrated history (five year minimum) of operating and managing a similar facility in substantial compliance with Department rules.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 to 443.455 & 443.991

Hist.: SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Nursing Facilities, 2009 Legislative Changes.

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Rules Adopted: 411-089-0070, 411-089-0075

Rules Amended: 411-085-0005, 411-085-0020, 411-089-0030, 411-089-0140

Rules Repealed: 411-089-0150, 411-085-0005(T), 411-085-0020(T), 411-089-0030(T), 411-089-0075(T), 411-089-0140(T)

Subject: The Department of Human Services, Seniors and People with Disabilities Division is permanently updating the nursing facility rules in OAR chapter 411, division 085 and division 089 to comply with the 2009 legislative changes from House Bill 2442, House Bill 2139, and Senate Bill 163.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-085-0005

Definitions

As used in OAR chapter 411, divisions 70 and 85 to 89, unless the rule requires otherwise, the following definitions apply:

(1) "Abuse" means:

(a) Any physical injury to a resident that has been caused by other than accidental means. This includes injuries that a reasonable and prudent individual would have been able to prevent, such as hitting, pinching or striking, or injury resulting from rough handling.

(b) Failure to provide basic care or services to a resident that results in physical harm, unreasonable discomfort, or serious loss of human dignity.

(c) Sexual contact with a resident, including fondling, caused by an employee, agent, or other resident of a long-term care facility by force, threat, duress or coercion, or sexual contact where the resident has no ability to consent.

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another individual, borrowing resident funds, spending resident funds without the resident's consent or, if the resident is not capable of consenting, spending resident funds for items or services from which the resident cannot benefit or appreciate, or spending resident funds to acquire items for use in common areas when such purchase is not initiated by the resident.

(e) Verbal abuse as prohibited by federal law, including the use of oral, written, or gestured communication to a resident or visitor that describes a resident in disparaging or derogatory terms.

(f) Mental abuse as prohibited by law including humiliation, harassment, threats of punishment, or deprivation, directed toward the resident.

(g) Corporal punishment.

(h) Involuntary seclusion for convenience or discipline.

(2) "Abuse Complaint" means any oral or written communication to the Department, one of the Department's agents, or a law enforcement agency alleging abuse.

(3) "Activities Program" means services offered to each resident that encourage the resident to participate in physical and mental exercises that are designed to maintain or improve physical and mental well-being and social skills.

(4) "Applicant" means the individual required to complete a nursing facility application for a license. Applicant includes a sole proprietor, each partner in a partnership, or the corporation that owns the nursing facility business. Applicant also includes the sole proprietor, each partner in a partnership, or the corporation that operates the nursing facility on behalf of the nursing facility business owner.

(5) "Area Agency on Aging (AAA)" means a Type B Area Agency on Aging that is an established public agency within a planning and service area designated under the Older Americans Act, 42 U.S.C. 3025, that has responsibility for local administration of Division programs.

(6) "Assessment" means a written evaluation of the resident's abilities, condition, and needs based upon resident interview, observation, clinical and social records, and other available sources of information.

(7) "Care" means services required to maximize resident independence, personal choice, participation, health, self-care, and psychosocial functioning, as well as to provide reasonable safety, all consistent with the preferences of the resident.

(8) "Certified Medication Assistant" or "Certified Medication Aide" means a certified nursing assistant who has been certified as a medication assistant or medication aide pursuant to ORS chapter 678 and the rules adopted thereunder.

(9) "Certified Nursing Assistant" means an individual who has been certified as a nursing assistant pursuant to ORS chapter 678 and the rules adopted thereunder.

(10) "Change of Ownership" and "Change of Operator" means a change in the individual or entity that owns the facility business, a change in the individual or entity responsible for the provision of services at the facility, or both. Events that change ownership include but are not limited to:

(a) A change in the form of legal organization of the licensee;

(b) Transfer of the title to the nursing facility enterprise by the owner to another party;

(c) If the licensee is a corporation, dissolution of the corporation, merger of the corporation with another corporation, or consolidation of one or more corporations to form a new corporation;

(d) If the licensee is a partnership, any event that dissolves the partnership;

(e) Any lease, management agreement, or other contract or agreement that results in a change in the legal entity responsible for the provision of services at the facility; or

(f) Any other event that results in a change of the operating entity.

(11) "Day Care Resident" means an individual who is not bedfast who receives services and care in a nursing facility for not more than 16 hours per day.

(12) "Department" means the Department of Human Services.

(13) "Division" means the Department of Human Services, Seniors and People with Disabilities Division.

(14) "Drug" has the same meaning set forth in ORS chapter 689.005.

(15) "Entity" means "Individual" as defined by these rules.

(16) "Establish a Nursing Facility" or "Maintain a Nursing Facility" means to possess or hold an incident of ownership in a nursing facility business.

(17) "Facility" or "Nursing Facility" means an establishment that is licensed and certified by the Division as a nursing facility.

(18) "Facility Fund" means a fund created under ORS 441.303 to meet expenses relating to the appointment of a trustee under ORS 441.277 to 441.323 or the appointment of a temporary manager under ORS 441.333 for a nursing facility or a residential care facility.

(19) "Health Care Facility" means a health care facility as defined in ORS 442.015, but also includes a residential care facility as defined in ORS 443.400 and an adult foster home as defined in ORS 443.705.

(20) "Hearing" means a contested case hearing according to the Administrative Procedures Act and the rules of the Department.

(21) "Incident of Ownership" means:

(a) An ownership interest;

(b) An indirect ownership interest; or

(c) A combination of direct and indirect ownership interest.

(22) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(23) "Individual" means an entity including an individual, a trust, an estate, a partnership, a corporation, or a state or governmental unit as defined in ORS 442.015 including associations, joint stock companies, insurance companies, the state, or a political subdivision or instrumentality including a municipal corporation.

(24) "Inpatient Beds" means a bed in a facility available for occupancy by a resident who is cared for and treated on an overnight basis.

(25) "Inspection" means any on-site visit to the facility by anyone designated by the Secretary of the U.S. Department of Health and Human Services, the Department, or a "Type B" Area Agency on Aging and includes but is not limited to a licensing inspection, certification inspection, financial audit, Medicaid Fraud Unit review, monitoring, or complaint investigation.

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(26) "Legal Representative" means an attorney at law, the individual holding a general power of attorney or special power of attorney for health care, a guardian, a conservator, or any individual appointed by a court to manage the personal or financial affairs of a resident, or individual, or agency legally responsible for the welfare or support of a resident, other than the facility.

(27) "Licensed Nurse" means a registered nurse or a licensed practical nurse.

(28) "Licensed Practical Nurse (LPN)" means an individual licensed under ORS chapter 678 to practice practical nursing.

(29) "Licensee" means the applicant to whom a nursing facility license has been issued.

(30) "Local Designee of the Division" means the local unit of the Division or the Type B Area Agency on Aging.

(31) "Long Term Care Facility" means nursing facility.

(32) "Major Alteration" means change other than repair or replacement of building materials or equipment with materials and equipment of a similar type.

(33) "Management" or "Control Interest" means:

(a) Possessing the right to exercise operational or management control over, or to directly or indirectly conduct the day-to-day operation of, an institution, organization, or agency; or

(b) An interest as an officer or director of an institution, organization, or agency organized as a corporation.

(34) "New Construction" means:

(a) A new building;

(b) An existing building or part of a building that is not currently licensed as a nursing facility;

(c) A part of an existing building that is not currently licensed for the purpose for which such part is proposed to be licensed (e.g., rooms that are proposed to be licensed as nursing facility resident rooms but are not currently licensed as nursing facility resident rooms);

(d) A major alteration to an existing building, additions, or conversions in use; or

(e) Renovation or remodeling of existing buildings.

(35) "NFPA" means National Fire Protection Association.

(36) "Nurse Practitioner" means an individual certified under ORS chapter 678 as a nurse practitioner.

(37) "Nursing Assessment" means evaluation of fluids, nutrition, bowel/bladder elimination, respiration, circulation, skin, vision, hearing, musculoskeletal systems, allergies, personal hygiene, mental status, communicative skills, safety needs, rest, sleep, comfort, pain, other appropriate measures of physical status, and medication and treatment regimes. Nursing assessment includes data collection, comparison with previous data, analysis or evaluation of that data, and utilization of available resource information.

(38) "Nursing Assistant" or "Nurse Aide" means an individual who assists licensed nurses in the provision of nursing care services. "Nursing Assistant" includes but is not limited to a certified nursing assistant, a certified medication assistant, and individuals who have successfully completed a state approved nurse assistant training course.

(39) "Nursing Care" means direct and indirect care provided by a registered nurse, licensed practical nurse, or nursing assistant.

(40) "Nursing Facility" means an establishment with permanent facilities including inpatient beds, that provide medical services, including nursing services, but excluding surgical procedures, and that provide care and treatment for two or more unrelated residents. In this definition, "treatment" means complex nursing tasks that cannot be delegated to an unlicensed individual. "Nursing Facility" shall only include facilities licensed and operated pursuant to ORS 441.020(2).

(41) "Nursing Facility Administrator" means an individual licensed under ORS chapter 678 who is responsible to the licensee and is responsible for planning, organizing, directing, and controlling the operation of a nursing facility.

(42) "Nursing Facility Law" means ORS chapter 441 and the rules for nursing facilities adopted pursuant thereto.

(43) "Nursing Home" means nursing facility.

(44) "Nursing Staff" means registered nurses, licensed practical nurses, and nursing assistants providing direct resident care in the facility.

(45) "Owner" means an individual with an ownership interest.

(46) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(47) "Pharmacist" has the same meaning as set forth in ORS 689.005.

(48) "Pharmacy" has the same meaning as set forth in ORS 689.005.

(49) "Physician" means an individual licensed under ORS chapter 677 as a physician.

(50) "Physician's Assistant" means an individual registered under ORS chapter 677 as a physician's assistant.

(51) "Podiatrist" means an individual licensed under ORS chapter 677 to practice podiatry.

(52) "Prescription" has the same meaning as set forth in ORS 689.005.

(53) "Public or Private Official" means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health agency;

(c) Employee of the Department, Area Agency on Aging, county health department, community mental health program, community developmental disabilities program, or nursing facility;

(d) Individual who contracts to provide services to a nursing facility;

(e) Peace officer;

(f) Clergy;

(g) Licensed clinical social worker, psychologist, licensed professional counselor, or licensed marriage and family therapist;

(h) Physical, speech, or occupational therapist, respiratory therapist, audiologist, or speech language pathologist;

(i) Senior center employee;

(j) Information and referral or outreach worker;

(k) Any public official who comes in contact with elderly individuals in the performance of the official's official duties;

(l) Firefighter or emergency medical technician;

(m) Legal counsel for the resident; or

(n) Guardian for, or family member of, the resident.

(54) "Registered Nurse (RN)" means an individual licensed under ORS chapter 678.

(55) "Rehabilitative Services" means specialized services by a therapist or a therapist's assistant to a resident to attain optimal functioning including but not limited to physical therapy, occupational therapy, speech and language therapy, and audiology.

(56) "Relevant Evidence" means factual information that tends to either prove or disprove the following:

(a) Whether abuse or other rule violation occurred;

(b) How abuse or other rule violation occurred; or

(c) Who was involved in the abuse or other rule violation.

(57) "Resident" means an individual who has been admitted, but not discharged, from the facility.

(58) "Restorative Aide" means a certified nursing assistant primarily assigned to perform therapeutic exercises and activities to maintain or re-establish a resident's optimum physical function and abilities according to the resident's restorative plan of care and pursuant to OAR 411-086-0150.

(59) "Restorative Services" or "Restorative Nursing" means those measures provided by nursing staff and directed toward re-establishing and maintaining the residents' fullest potential.

(60) "Safety" means the condition of being protected from environmental hazards without compromise to a resident's or legal guardian's choice, or undue sacrifice of the resident's independence.

(61) "Significant Other" means an individual designated by the resident or by the court to act on behalf of the resident. If the resident is not capable of such designation, and there is no court-appointed individual, then a significant other shall mean a family member or friend who has demonstrated consistent concern for the resident. No rule using this term is intended to allow release of, or access to, confidential information to individuals who are not otherwise entitled to such information, or to allow such individuals to make decisions that they are not entitled to make on behalf of a resident.

(62) "Suspected Abuse" means reasonable cause to believe that abuse may have occurred.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 410.070, 441.055, 441.615 & 441.637

Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.630, 441.637, 441.650

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 1-2008(Temp), f. 2-8-08, cert. ef. 3-1-08 thru 8-28-08; SPD 10-2008, f. & cert. ef. 8-28-08; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10

411-085-0020

License Fees, Special Assessment

(1) LICENSE APPLICATION FEES.

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(a) License application fees may not be prorated for a partial year. The annual license fee is:

- (A) For 1 to 15 beds: \$180
- (B) For 16 to 49 beds: \$260
- (C) For 50 to 99 beds: \$520
- (D) For 100 to 150 beds: \$670
- (E) For more than 150 beds: \$750

(b) All monies received shall be deposited in the Quality Care Fund.

(2) SPECIAL TRUST FUND ASSESSMENT.

(a) Whenever the Department determines that the balance in the Facility Fund created by Oregon statute is less than the amount established by the statute, a special assessment is levied against all licensees. The special assessment shall be pro-rated (based upon the annual fee of the licensee) in order to result in collection of an amount that shall result in a Facility Fund balance of no more than the amount set by the statute. In no event may the special assessment be greater than the annual license fee. The special assessment may be levied only once each calendar year.

(b) Monies are disbursed from the Facility Fund in accordance with ORS 441.277 to 441.323.

Stat. Auth.: ORS 410.070 & 441.055

Stats. Implemented: ORS 441.020, 441.055, 441.303 & 441.615

Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SDSD 13-1999, f. 12-30-99, cert. ef. 1-1-00; SPD 26-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 19-2009, f. 12-23-09, cert. ef. 1-1-10; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10

411-089-0030

Civil Penalties

(1) CONSIDERATIONS. In determining the amount of a civil penalty the Division shall consider:

(a) Any prior violations of statute or rule by the facility or licensee that relates to operation of a nursing facility;

(b) The financial benefits, if any, realized by the facility as a result of the violation, such as costs avoided as a result of not having obtained sufficient staffing, equipment, or supplies;

(c) The gravity of the violation including the actual and potential threat to health, safety, and well-being of residents, the duration of the threat or number or times the threat occurred, and the number of residents threatened;

(d) The severity of the actual or potential harm caused by the violation including whether the actual or potential harm included loss of life or serious physical or emotional injury;

(e) The facility's history of correcting violations and preventing recurrence of violations; and

(f) Exhibit 89-1, Civil Penalty Chart, which is incorporated by reference and is a part of this rule.

(2) SINGLE VIOLATION CIVIL PENALTIES. Violations of any requirement within any part of the following statutes, rules, or sections of the following rules are a violation that may result in a civil penalty after a single occurrence.

(a) Violations involving direct resident care, feeding, or sanitation involving direct resident care including any violation of:

(A) OAR 411-085-0060 (Specialty Nursing Facilities);

(B) OAR 411-085-0200(2) (Facility Employees);

(C) OAR 411-085-0210 to 411-085-0220 (Facility Policies, Quality Assurance);

(D) OAR 411-085-0360 (Abuse);

(E) OAR 411-086-0010 to 411-086-0020 (Administrator, Director of Nursing Services);

(F) OAR 411-086-0040 (except section (3)) (Admission of Residents);

(G) OAR 411-086-0050 to 411-086-0060 (Day Care, Assessment, Care Plan);

(H) OAR 411-086-0110 to 411-086-0150 (Nursing Services);

(I) OAR 411-086-0200 to 411-086-0260 (Physician, Dental, Rehabilitative, Activity, Social, Dietary, and Pharmaceutical Services);

(J) OAR 411-086-0300 (except section (6)) (Clinical Records);

(K) OAR 411-086-0310 to 411-086-0360 (Employee Orientation and Training, Disaster Preparation, Infection Control, Smoking, Furnishings, and Equipment);

(L) OAR 411-087-0100(1)(a) and (c) (Repair and Cleanliness); or

(M) OAR 411-087-0440 (Alarm and Nurse Call Systems).

(b) Violation involving failure to provide staff-to-resident ratio including any violation of:

(A) OAR 411-086-0030 (except section (1)) (RN Care Manager); or

(B) OAR 411-086-0100 (Nursing Staffing).

(c) Violation of any rule adopted pursuant to ORS 441.610 including:

(A) OAR 411-085-0300 to 411-085-0350 (Resident Rights);

(B) OAR 411-086-0040(3) (Advance Directives);

(C) OAR 411-086-0300(6) (Record Retention); or

(D) OAR chapter 411, division 088 (Rights Regarding Transfers).

(d) Violation of ORS 441.605 (Resident Rights) or any general or final order of the Division.

(3) CIVIL PENALTIES REQUIRING REPEAT VIOLATIONS. Violation of any Division rule not listed in section (2) of this rule is subject to a civil penalty under the following circumstances:

(a) Such violation is determined to exist on two consecutive surveys, inspections, or visits; and

(b) The Division prescribed a reasonable time for elimination of the violation at the time of, or subsequent to, the first citation.

(4) AMOUNT OF CIVIL PENALTY.

(a) Violation of any requirement or order listed in section (2) of this rule is subject to a civil penalty of not more than \$500 for each day the violation occurs, unless otherwise provided by this section;

(b) Violation of any requirement listed in section (3) of this rule is subject to a civil penalty of not more than \$500 per violation, unless otherwise provided by this section;

(c) Violation involving resident abuse that resulted in serious injury or death is subject to a civil penalty of not less than \$500 nor more than \$1,000, or as otherwise required by federal law (ORS 441.995(3) and ORS 441.715(1)(c));

(d) The Division shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse that resulted in the death, serious injury, rape, or sexual abuse of a resident. The civil penalty may not exceed \$15,000 in any 90-day period.

(A) To impose this civil penalty, the Division shall establish that:

(i) The abuse arose from deliberate or other than accidental action or inaction;

(ii) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(iii) The person substantiated for the abuse had a duty of care toward the resident.

(B) For the purposes of this civil penalty, the following definitions apply:

(i) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(ii) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(iii) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(iv) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(5) PAYMENT TO BE CONSIDERED ADMISSION OF VIOLATION. Unless the Division agrees otherwise, for purposes of history of the facility, any payment of a civil penalty shall be treated by the Division as a violation of the statutes or rules alleged in the civil penalty notice for which the civil penalty was paid for.

(6) All penalties recovered shall be deposited in the Quality Care Fund.

(7) NOTICE. The Division's notice of its intent to impose a civil penalty shall include the statements set out in OAR 411-089-0040(3)(a)-(f), and shall also include a statement that if the licensee fails to request a hearing within 10 days of the date the notice was mailed, the licensee shall have waived the right to a hearing.

(8) HEARING REQUEST.

(a) If the Division issues a notice of intent to impose a civil penalty, the licensee shall be entitled to a hearing in accordance with ORS chapter 183.

(b) A request for a hearing must be in writing and must be received by the Division within 10 days of the date the notice of intent to impose a civil penalty was mailed to the licensee. The hearing request must include an admission or denial of each factual matter alleged in the notice and shall affirmatively allege a short plain statement of each relevant affirmative defense the licensee may have. The Division may extend the time allowed

ADMINISTRATIVE RULES

for submission of the admission or denial and affirmative defenses for up to 30 calendar days.

(9) **DEFAULT ORDER.** If a hearing is not timely requested, or if the licensee withdraws a hearing request or fails to appear at a scheduled hearing, the Division may enter a final order by default imposing the civil penalty. In the event of a default, the Division's file on the subject of the civil penalty automatically becomes a part of the record for purposes of proving the Division's prima facie case.

Stat. Auth.: ORS 441.615, 441.637, 441.710, 441.715 & 441.990
Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.637, 441.715, 441.990
Hist.: SSD 19-1990, f. 8-29-90, cert. ef. 10-1-90; SSD 8-1993, f. & cert. ef. 10-1-93; SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10

411-089-0070

Facility Fund

(1) Moneys in the Facility Fund are appropriated to the Division to pay for the reasonable expenses of a trustee or temporary manager.

(2) **BASIS FOR APPOINTMENT.**

(a) A trustee may be appointed when a court finds that the health and welfare of facility residents are in jeopardy pursuant to ORS 441.281.

(b) A temporary manager may be appointed by the Division, with consent of the licensee, if the Division determines that the health or safety of facility residents is in jeopardy pursuant to OAR 411-089-0075.

(3) **LICENSEE REPAYMENT TO FACILITY FUND.** When the Division is required to utilize the Facility Fund to meet expenses of a trustee or temporary manager, the amount used shall constitute a loan to the facility and shall be repayable to the Facility Fund.

(4) **FACILITY FUND FEE ASSESSMENT.**

(a) Licensees shall pay an annual fee that does not exceed the annual license fee until the Facility Fund balance reaches \$750,000.

(b) When the Facility Fund balance reaches \$750,000, annual fee collection shall be discontinued.

(c) When the Facility Fund balance falls below \$600,000, annual fee collection shall be reinstated.

(5) **ALLOWABLE COST.** The facility payment described in section (4)(a) of this rule shall be considered an allowable cost.

Stat Auth: ORS 441.341, 441.615, 441.637, 441.710, 441.715, & 441.990
Stats Implemented: ORS 441.301, 441.303, and 441.336
Hist.: SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10

411-089-0075

Temporary Manager

(1) **APPOINTMENT.** The Division, with the consent of the licensee, may appoint a temporary manager to assume control of the day-to-day operation of the facility in accordance with Oregon Laws 2009, chapter 539, sections 14 through 18. The appointment may be for a period not to exceed six months.

(2) **CRITERIA.** A temporary manager may be appointed if the Division determines that the health or safety of residents in the facility are, or in the immediate future shall be, in jeopardy based upon:

(a) The licensee's unwillingness or inability to comply with Division rules in the operation of the facility;

(b) The imminent insolvency of the facility;

(c) The Division's revocation or suspension of the license of the facility; or

(d) The Division's determination that the licensee intends to cease operations and to close the facility without adequate arrangements for the relocation of the residents.

(3) **DUTIES AND POWERS.** The temporary manager has all of the duties and powers, as agreed upon between the Division and the licensee that are necessary to ensure the safety and well-being of the residents and the continued operation of the facility.

(4) **QUALIFICATIONS.** In order to qualify for appointment as temporary manager, the prospective appointee must:

(a) Be familiar with the Division's rules for the operation of the facility to be served;

(b) Be familiar with the needs of the resident population in the facility to be served; and

(c) Have a demonstrated history (five year minimum) of operating and managing a similar facility in substantial compliance with Division rules.

Stat. Auth.: ORS 441.615, 441.637, 441.710, 441.715 & 441.990
Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.637, 441.715, 441.990
Hist.: SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10

411-089-0140

Letters of Determination

Within 60 days of receipt by the Division of the investigation report, the Division shall issue a letter of determination.

(1) **CONTENT.** The letter of determination shall:

(a) Explain the nature of each allegation;

(b) Include the date and time of each occurrence;

(c) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or unable to substantiate;

(d) For each substantiated allegation, state whether the violation was abuse or another rule violation;

(e) For each substantiated allegation of abuse, explain the Division's determination of responsibility;

(f) Include a copy of the complaint investigation report;

(g) State that the complainant, any individual found responsible for abuse, and the facility have 10 days to provide additional or different information; and

(h) Explain, when applicable, if sanctions (e.g., civil penalty, license revocation) are pursued, a formal appeal process shall be available.

(2) **APPEAL RIGHTS, NURSING ASSISTANT.** The letter of determination, in cases of substantiated abuse by a nursing assistant, shall explain the following:

(a) The Division's intent to enter the finding of abuse into the Nursing Assistant Registry;

(b) The nursing assistant may provide additional information for inclusion in the Nursing Assistant Registry if provided within 10 days;

(c) The Nursing Assistant Registry;

(d) The nursing assistant has 10 days to respond in writing with different or additional information, 30 days to request in writing a contested case hearing as provided in ORS 183.411 to 183.470, and the consequences of failure to respond; and

(e) If the opportunity to request a contested case hearing expires without a request for hearing by the nursing assistant, the nursing assistant shall be found responsible for the abuse and the finding shall be entered in the Nursing Assistant Registry.

(3) **DISTRIBUTION.**

(a) The letter of determination shall be distributed to the facility, the complainant (if known), and the Division or Type B AAA office;

(b) The letter of determination shall be sent by certified mail or delivered in person to any nursing assistant found responsible for abuse. In the case of a nursing assistant, notice sent to the nursing assistant's last known address is sufficient to meet the requirements of this rule;

(c) The letter of determination shall also be mailed to any health related board or agency that certified or licensed an individual determined to be responsible for abuse. **EXCEPTION:** If the party determined to be responsible is a nursing assistant, the letter may not be mailed to the State Board of Nursing until the nursing assistant has exhausted all his or her appeal rights; and

(d) A copy of the letter of determination shall be placed in the Division's facility complaint file.

(4) **REVISION.**

(a) The Division may reinvestigate a complaint, issue a revised letter of determination, or both if the Division determines further information provided by the complainant, accused individual, or facility merits such action.

(b) If the Division issues a revised letter of determination, the letter shall be distributed to all individuals identified in section (3) of this rule.

(5) **FAILURE TO REQUEST HEARING OR TO APPEAR.**

(a) If the nursing assistant fails to request a contested case hearing in writing within 30 days of the letter of determination, or if the nursing assistant scheduled to attend the hearing fails to attend, the Division shall affirm the letter of determination and notify the State Board of Nursing of the Division's finding. The abuse finding shall be entered into the Nursing Assistant Registry.

(b) If the nursing assistant is scheduled to appear at a contested case hearing but fails to attend at the scheduled time, or within 15 minutes thereafter, the nursing assistant shall be considered to have waived the right to a hearing. The hearing may be rescheduled if:

(A) A written request to reschedule the hearing is received by the Division within 10 days after the scheduled hearing; and

(B) The causes for not attending at the scheduled time for the hearing and for not requesting a postponement of the hearing prior to the hearing were beyond the control of the nursing assistant.

(6) **JUDICIAL REVIEW.** The nursing assistant found to be responsible for abuse shall be provided notice of the opportunity for judicial review

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pursuant to ORS 183.484. This notice shall accompany or be incorporated within the Division's final order regarding the nursing assistant's responsibility for abuse.

Stat. Auth.: ORS 410.070, 441.055 & 441.637

Stats. Implemented: ORS 441.637 & 441.677

Hist.: SSD 1-1995, f. 1-30-95, cert. ef. 2-1-95; Administrative correction, 6-24-99; SPD 24-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 11-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Employment and Alternatives to Employment Services for Individuals with Developmental Disabilities.

Adm. Order No.: SPD 12-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

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Rules Amended: 411-345-0020, 411-345-0080, 411-345-0100, 411-345-0210, 411-345-0230, 411-345-0290

Rules Repealed: 411-345-0020(T), 411-345-0080(T), 411-345-0100(T), 411-345-0210(T), 411-345-0230(T), 411-345-0290(T)

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently amending the rules in OAR chapter 411, division 345 relating to employment and alternatives to employment services for individuals with developmental disabilities to:

- Implement House Bill 2442 (2009) by changing the definition of abuse for individuals with developmental disabilities, adding a requirement to inquire of an applicant if the applicant has been found to have committed abuse, adding a requirement to prohibit the use of public funds for purposes of employment when a person has been convicted of certain crimes, and adding a requirement to prohibit hiring a person when they have been convicted of certain crimes; and
- Implement a provider service payment limitation effective February 1, 2010.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-345-0020

Definitions

As used in these rules, the following definitions apply:

(1) "Abuse" means abuse of an adult as defined in OAR 407-045-0260.

(2) "Abuse Investigation and Protective Services" means 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 OAR 407-045-0310.

(3) "Administration of Medication" means the act of placing a medication in or on an individual's body by a staff member who is responsible for the individual's care.

(4) "Adult" means an individual 18 years or older with developmental disabilities.

(5) "Advocate" means a person other than paid staff who has been selected by the individual or by the individual's legal representative 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) "Aid 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.

(7) "Alternatives to Employment Services" mean any services, conducted away from an individual's residence that addresses the academic, recreational, social, or therapeutic needs of the individuals for whom it serves.

(8) "Annual Individual Support Plan (ISP) Meeting" means an annual meeting, coordinated by a services coordinator of the community developmental disability program that is attended by the Individual Support Plan team members and other persons such as an advocate as appropriate. The purpose of the meeting is to determine needs, coordinate services and training, and develop an Individual Support Plan.

(9) "Board of Directors" mean a group of persons formed to set policy and give directions to a program designed to provide employment and alternatives to employment services for individuals with developmental disabilities. A board of directors includes local advisory boards used by multi-state organizations.

(10) "Certificate" means a document issued by the Department to a provider of employment and alternatives to employment services that certi-

fies that the provider is eligible to receive state funds for the provision of these services.

(11) "Choice" means the individual's expression of preference, opportunity for, and active role 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 verbally, through sign language, or by other communication methods.

(12) "Community Based Service" means any service or program providing opportunities for the majority of an individual's time to be spent in community participation or integration.

(13) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for the planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(14) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(15) "Controlled Substance" means any drug classified as Schedules 1 to 5 under the Federal Controlled Substance Act.

(16) "Department" means the Department of Human Services (DHS).

(17) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder.

(18) "Director" means the person responsible for administration of the employment and alternatives to employment services and provision of support services for individuals.

(19) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(20) "Employment Services" means any service that has as its primary goal the employment of individuals, including job assessment, job development, training, and ongoing supports.

(21) "Entry" means admission to a Department-funded developmental disability service.

(22) "Exit" means either termination from a Department-funded developmental disability service provider or transfer from one Department-funded program to another. Exit does not mean transfer within a service provided through the same CDDP.

(23) "Facility Based Service" means any service or program that occurs in a location serving more than eight individuals.

(24) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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.

(25) "Incident Report" means a written report of any injury, accident, acts of physical aggression, or unusual incident involving an individual.

(26) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(27) "Individual" means a person with developmental disabilities for whom services are planned and provided.

(28) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The Individual Support Plan is developed at minimum annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The Individual Support Plan is the individual's Plan of Care for Medicaid purposes.

(29) "Individual Support Plan (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual (if appropriate for in-home supports), the guardian (if any), the services coordinator, and may include family or other persons requested to develop the Individual Support Plan.

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(30) "Integration" means:

(a) The use by individuals with developmental disabilities of the same community resources that are used by and available to other persons in the community;

(b) Participation in the same community activities in which persons without a developmental disability participate, together with regular contact with persons without a developmental disability; and

(c) Individuals with developmental disabilities live in homes that are in proximity to community resources and work and participate in activities that foster contact with persons in their community.

(31) "Legal Representative" means the parent, if the individual is under age 18, unless the court appoints another person or agency to act as guardian. For those individuals over the age of 18, a legal representative means an attorney at law who has been retained by or for the individual or a person or agency authorized by the court to make decisions about services for the individual.

(32) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(33) "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.

(34) "Physical Restraint" means any manual physical holding of or contact with an individual that restricts the individual's freedom of movement.

(35) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(36) "Productivity" as defined in ORS 427.005 means engagement in income producing work by an individual with developmental disabilities that is measured through improvements in income level, employment status or job advancement, or engagement by an individual with developmental disabilities in work contributing to a household or community.

(37) "Protection" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(38) "Psychotropic Medication" means 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.

(39) "Self-Administration of Medication" means the 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 the written order of a physician, and safely maintains the medication without supervision.

(40) "Service Provider" or "Service" 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. For the purpose of these rules "provider" or "program" is synonymous with "service provider."

(41) "Services Coordinator" means an employee of the community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, monitor Individual Support Plan services, and to act as a proponent for individuals with developmental disabilities.

(42) "Significant Other" means a person selected by the individual to be the individual's friend.

(43) "Staff" means a paid employee responsible for providing services to individuals and whose wages are paid in part or in full with funds contracted with the community developmental disability program or contracted directly through the Department.

(44) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(45) "Support" means assistance that individuals require, solely because of the affects of developmental disability, to maintain or increase independence, achieve community presence and participation, and improve

productivity. Support is flexible and subject to change with time and circumstances.

(46) "Supported Employment" means the provision of situational assessment, job development, job training, and ongoing support necessary to place, maintain, or change the employment of an individual in an integrated work setting. Work must be performed on a full or part-time basis, averaging at least 20 hours per week for each pay period. The individual is compensated in accordance with the Fair Labor Standards Act.

(47) "These Rules" mean the rules in OAR chapter 411, division 345.

(48) "Transfer" means movement of an individual from one site to another within the same county, administered by the same service provider and which has not been addressed within the Individual Support Plan.

(49) "Transition Plan" means a written plan for the period of time between an individual's entry into a particular service and when the individual's Individual Support Plan is developed and approved by the Individual Support Plan team. The Transition Plan 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 the Individual Support Plan development.

(50) "Unit of Service" means the equivalent of an individual receiving services 25 hours per week, 52 weeks per year minus the following:

(a) Personal, vacation, or sick leave allowed by the service provider or employer;

(b) Holidays as recognized by the state of Oregon; and

(c) Up to 4 days for all-staff in-service training.

(d) Any deviation from the 25 hours per week per individual served must be agreed to and documented by the Individual Support Plan team.

(51) "Unusual Incident" means incidents involving serious illness or accidents, death of an individual, injury or illness of an individual requiring inpatient or emergency hospitalization, suicide attempts, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(52) "Volunteer" means any person providing services without pay to individuals receiving employment or alternatives to employment services.

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 309-047-0005, 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

411-345-0080

Inspections and Investigations

(1) All services covered by this rule must allow the following types of investigations and inspections:

(a) Quality assurance, certificate renewal, and on-site inspections;

(b) Complaint investigations; and

(c) Abuse investigations.

(2) The Department, the Department's designee, or proper authority shall perform all inspections and investigations.

(3) Any inspection or investigation may be unannounced.

(4) All documentation and written reports required by this rule must be:

(a) Open to inspection and investigation by the Department, the Department's designee, or proper authority; and

(b) Submitted to or made available for review by the Department within the time allotted.

(5) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or the Department's designee, has determined to initiate an investigation, the service provider may not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person, or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; or

(D) What, if any, immediate personnel actions must be taken to assure individual safety.

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(6) When an abuse investigation has been initiated, the CDDP must provide notice to the program according to OAR 407-045-0290.

(7) The Department or the Department's designee must conduct investigations as described in OAR 407-045-0250 to OAR 407-045-0360.

(8) When an abuse investigation has been completed, the CDDP must provide notice of the outcome of the Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(9) Upon completion of the abuse investigation by the Department, the Department's designee, or a law enforcement agency, the service provider may conduct an investigation to determine if any other personnel actions are necessary.

(10) Upon completion of the Abuse Investigation and Protective Services Report, according to OAR 407-045-0330 the sections of the report that are public records and not exempt from disclosure under the public records law must be provided to the appropriate service provider. The service provider must implement the actions necessary within the deadlines listed, to prevent further abuse as stated in the report.

(11) A plan of improvement must be submitted to the CDDP and the Division for any noncompliance found during an inspection under this rule.

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 309-047-0035, 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

411-345-0100

Program Management

(1) **NONDISCRIMINATION.** The service must comply with all applicable state and federal statutes, rules, and regulations in regard to nondiscrimination in employment practices.

(2) **PROHIBITION AGAINST RETALIATION.** A community program or service provider may not retaliate against any staff that reports in good faith suspected abuse or retaliate against the individual with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any community facility, community program, or person that retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be 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. Adverse action means only those actions arising solely from the filing of an abuse report. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program, or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to:

(A) Discharge or transfer from the community program, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for services; or

(D) Restriction or prohibition of access to the community program or the individuals served by the program.

(3) **DOCUMENTATION REQUIREMENTS.** All entries 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 three years.

(4) **PROVIDER SERVICE PAYMENT LIMITATION.**

(a) Effective February 1, 2010, monthly service rates, as authorized in Division payment and reporting systems for individuals enrolled in employment and alternatives to employment services and paid to certified providers for delivering employment or alternatives to employment services as described in these rules, shall be limited to a maximum of \$1,800 per month.

(b) An exception to the provider service payment limitation, only for costs of directly supporting the individual served, may be granted by the Division if documentation supports the following criteria are met:

(A) The individual has a current behavior or health condition, as well as a documented history of such, posing a risk to the individual's health and welfare or that of others; AND

(B) The individual has a current employment and alternatives to employment service rate and ISP requiring at least 1:1 staffing for purposes of meeting behavioral or medical support needs; AND

(C) Steps have been taken to address the existing behavior or condition within the \$1,800 cap and there is continued risk to health and safety of self or others, regardless of setting.

(c) Special conditions shall be required in the provider contract. The Division or the Division's designee shall monitor services to assure their delivery and the continued need for additional funds.

(5) **INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION.** As stated in ORS 427.007 the service must have a written policy that states that each individual's ISP is developed to meet each of the following:

(a) Employment and activities that address each individual's level of independence;

(b) Employment and activities that address each individual's productivity; and

(c) Employment and activities that address each individual's integration into the local community.

(6) **DISSOLUTION OF SERVICE.** Prior to the dissolution of a service, a representative of the governing body or owner of the service must notify the Department in writing 30 days in advance and make appropriate arrangements for the transfer of individual records.

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 309-047-0045, 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

411-345-0210

Health and Safety: Personnel

(1) **BASIC PERSONNEL POLICIES AND PROCEDURES.** The service 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 has been identified as an accused person in an abuse investigation. The service must also have in place and implement personnel policies and procedures that address disciplinary and termination of employment when the allegation of abuse has been substantiated.

(2) **MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.** Any employee of a private agency that contracts with a CDDP is a mandatory reporter. Notification of mandatory reporting status must be made at least annually to all employees on forms provided by the Department. All employees must be provided with a Department-produced card regarding abuse reporting status and abuse reporting.

(3) **APPLICATION FOR EMPLOYMENT.** An application for employment at the service must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(4) **CRIMINAL RECORDS CHECKS.** Any employee, volunteer, advisor, or any subject individual defined by OAR 407-007-0200 to 407-007-0370, who has or will have contact with an individual of the service, must have an approved criminal records check in accordance with OAR 407-007-0200 to 407-007-0370 and under ORS 181.534.

(a) Effective July 28, 2009, the service may not use public funds to support, in whole or in part, any person as described in section (4) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Section (4)(a) of this rule does not apply to employees of the service provider who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) Any employee, volunteer, advisor, or any subject individual as defined by OAR 407-007-0200 to 407-007-0370 must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or designee within 24 hours.

(5) **DIRECTOR QUALIFICATIONS.** The service must be operated under the supervision of a Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in developmental disabilities, social services, mental health, or a related field. Six years of experience, including supervision, in the field of developmental disabilities or a social services or mental health field may be substituted for a degree.

(6) **STAFF QUALIFICATIONS.** Any staff who supervises individuals must:

(a) Be at least 18 years of age;

(b) Be capable of performing the duties of the job as described in a current job description which he or she has signed and dated; and

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(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.

(7) **PERSONNEL FILES AND QUALIFICATION RECORDS.** The service must maintain a personnel file on each staff person. In addition, the service must maintain the following on each staff person in a file available to the Department or the Department's designee for inspection:

(a) Written documentation that references and qualifications were checked;

(b) Written documentation of six hours of pre-service training prior to supervising individuals including mandatory abuse reporting training;

(c) Documentation that CPR and first-aid certification were obtained from a recognized training agency within three months of employment and kept current if needed to meet the staffing requirements as described in OAR 411-345-0220(1)(b)(A) and (B);

(d) Written documentation of 12 hours of job-related in-service training annually;

(e) Written documentation of employees' notification of mandatory reporter status;

(f) Written documentation of any founded report of child abuse or substantiated abuse;

(g) Written documentation of an approved criminal records check by the Department; and

(h) Written documentation of any complaints filed against the staff person and the results of the complaint process, including, if any, disciplinary action.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 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 309-047-0100, 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 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 12-2010, f. 6-30-10, cert. ef. 7-1-10

411-345-0230

Health and Safety: Incident Reports and Emergency Notifications

(1) **INCIDENT REPORTS.** A written report that describes any injury, accident, act of physical aggression, or unusual incident involving an individual must be placed in the individual's record. Such description 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) **SENT TO SERVICES COORDINATOR.** Copies of all unusual incident (as defined by OAR 411-345-0020) reports must be sent to the services coordinator within five working days of the incident.

(3) **NOTIFICATION OF ALLEGATIONS OF ABUSE AND ABUSE INVESTIGATIONS.** The program must notify the CDDP immediately of an incident or allegation of abuse falling within the scope of OAR 407-045-0260.

(4) **IMMEDIATE NOTIFICATION.** In the case of an unusual incident requiring emergency response, the service must immediately notify:

(a) The individual's legal guardian or conservator, parent, next of kin, designated contact person, and other significant person;

(b) The CDDP;

(c) The individual's residential provider, if applicable; and

(d) Any other agency responsible for the individual.

(5) **MISSING PERSON NOTIFICATION.** In the case of an individual who is missing or absent without supervision beyond the time frames established by the ISP team, the service must immediately notify:

(a) The individual's designated contact person;

(b) The individual's guardian, if any, or nearest responsible relative;

(c) The individual's residential provider, if applicable;

(d) The local police department; and

(e) The CDDP.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 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

411-345-0290

Certificate Denial, Suspension, Revocation, Refusal to Renew

(1) The Department may deny, revoke, or refuse to renew a certificate when it finds the service, or any person holding five percent or greater financial interest in the service:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized and fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this subsection, "inspection" means an onsite review of the service site by the Department for the purpose of investigation or certification);

(c) Has demonstrated a failure to comply with applicable laws relating to safety from fire;

(d) Has been convicted of any crime that would have resulted in an unacceptable criminal records check upon hiring or authorization of service;

(e) Has been convicted of a misdemeanor associated with the operation of employment and alternatives to employment services;

(f) Falsifies information required by the Department to be maintained or submitted regarding care of individuals, employment and alternatives to employment services finances, or individuals' funds; or

(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.

(2) In any case where the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the service may not continue operation.

(3) Following a Department finding that there is a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in section (1) of this rule has occurred, the Department may issue a notice of certificate revocation, denial, or refusal to renew.

(4) Following the notice issued pursuant to section (3) of this rule, the Department shall provide the certificate holder an opportunity for an informal conference within 10 calendar days from the date of the notice.

(5) Following issuance of a notice of certificate revocation, denial, or refusal to renew, the Department shall provide the opportunity for a hearing pursuant to OAR 411-345-0300.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610, 430.630 & 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 309-047-0135, 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

Rule Caption: Adult Foster Homes for Individuals with Developmental Disabilities.

Adm. Order No.: SPD 13-2010

Filed with Sec. of State: 6-30-2010

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Rules Amended: 411-360-0010, 411-360-0020, 411-360-0030, 411-360-0040, 411-360-0050, 411-360-0060, 411-360-0070, 411-360-0080, 411-360-0090, 411-360-0100, 411-360-0110, 411-360-0120, 411-360-0130, 411-360-0140, 411-360-0150, 411-360-0160, 411-360-0170, 411-360-0180, 411-360-0190, 411-360-0200, 411-360-0210, 411-360-0220, 411-360-0230, 411-360-0240, 411-360-0250, 411-360-0260, 411-360-0270, 411-360-0275, 411-360-0280, 411-360-0290, 411-360-0300, 411-360-0310

Rules Repealed: 411-360-0020(T), 411-360-0040(T), 411-360-0050(T), 411-360-0090(T), 411-360-0110(T), 411-360-0210(T), 411-360-0270(T)

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is permanently amending the rules in OAR chapter 411, division 360 relating to foster homes for adults with developmental disabilities (AFH-DD) to:

• Implement House Bill 2442 (2009) by changing the definition of abuse for individuals with developmental disabilities, requiring licensees to ask applicants in the AFH-DD if they have ever been found to have committed abuse, prohibiting the use of public funds for employment (directly or indirectly), prohibiting the employment of a person when a person has been convicted of certain crimes as defined in House Bill 2442, and adding notification requirements to

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residents, residents guardians, and case managers when abuse of an adult with developmental disabilities has been substantiated in an AFH-DD;

- Implement House Bill 3114 (2009) by adding requirements for consent and reporting for children and young adults in child welfare custody that are on more than one psychotropic medication;
- Require the development of emergency planning in the event of a natural or man made disaster to comply with House Bill 2371 (2007);
- Address the utilization of medical marijuana in an AFH-DD setting to assure adherence to Oregon Medical Marijuana Program (OMMP) regulations and Centers for Medicare and Medicaid Services (CMS) payment for services, given OMMP is not recognized by the federal government;
- Increase the level of experience for 2B level AFH-DD providers to include two years working with individuals with challenging behaviors to assure that the skills and abilities to meet the needs of the population are met, and decrease likelihood of failed placements and protective services in behavioral homes;
- Require mandated civil penalties as required by statute and enhanced civil penalty per House Bill 2442;
- Require the use of single action hardware on doors used for egress to increase the safety of those served in AFH-DD; and
- Require that the licensee maintain documentation for employees to include specific required training, as well as training on the Emergency Plan, orientation to the AFH-DD, Individual Support Plans, Nursing Care Plans, and Behavior Support Plans if applicable to assure that employees are fully aware of care plans and requirements needed to meet the needs of the population served.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-360-0010

Statement of Purpose

The rules in OAR chapter 411, division 360 prescribe the standards and procedures for the licensure and provision of care and services to individuals in Department of Human Services' adult foster homes for individuals with developmental disabilities (AFH-DD) in a homelike environment that is safe and secure. The goal of the AFH-DD is to provide necessary care while emphasizing the individual's independence. This goal is reached through a cooperative relationship between the provider, the individual, the individual's guardian if applicable, and the community developmental disability program in a setting that protects and encourages the individual's independence, dignity, choice, and decision making. The individual's needs are to be addressed in a manner that supports and enables the individual to function at the highest level of independence possible.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0020

Definitions

- (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 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) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for health and safety. For the purpose of these rules, activities of daily living consist of eating, dressing and grooming, bathing and personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior management.
 - (a) "Independent" means the individual may perform the ADL without help.
 - (b) "Assist" means the individual is unable to accomplish all tasks of an ADL, even with assistive devices, without the assistance of another person.
 - (c) "Full Assist" means the individual is unable to do any part of an ADL task, even with assistive devices, without the assistance of another person. This means the individual requires hands-on assistance of another

person through all phases of the activity, every time the activity is attempted.

(4) "Administration of Medication" means the act by a caregiver, who is responsible for the individual's care, of placing a medication in, or on, an individual's body.

(5) "Adult Foster Home (AFH)" means any family home or facility licensed by the Division in which residential care is provided in a home-like environment for compensation to five or fewer adults who are elderly or physically disabled and are not related to the provider by blood, marriage, or adoption. For the purpose of these rules, an AFH 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 Developmental Disabilities (AFH-DD)" means an adult foster home licensed by the Division to provide residential care and support to individuals with developmental disabilities.

(7) "Advocate" means a person other than a paid caregiver who has been selected by the individual, or by the individual's legal representative, 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.

(8) "Aid 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.

(9) "Appeal" means the process for a contested case hearing under ORS chapter 183 that a licensed provider may use to petition the suspension, denial, revocation, or civil penalty of their license or application.

(10) "Applicant" means any person who completes an application for a license who shall also be an owner of the business.

(11) "Assistant Director" means the assistant director of the Division, or that person's designee.

(12) "Bill of Rights" means civil, legal, or human rights afforded to AFH individuals that are in accord with those rights afforded to all other U.S. citizens including but not limited to those rights delineated in the AFH Bill of Rights as described in OAR 411-360-0170.

(13) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR chapter 851, division 047.

(14) "Care" means:

(a) Supportive services that encourage maximum individual independence and enhance quality of life including but not limited to:

(A) Provision of 24 hour supervision, being aware of the individual's whereabouts, and protection;

(B) Assistance with activities of daily living such as bathing, dressing, grooming, eating, management of money, transportation, socialization, recreation, and medication management; and

(C) Monitoring the activities of the individual to ensure the individual's health, safety, and welfare.

(b) The term "care" is synonymous with services.

(15) "Caregiver" means any person responsible for providing care and services to individuals including the provider, the resident manager, and any temporary, substitute, or supplemental caregiver, or other person designated to provide care and service to individuals.

(16) "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.

(17) "Choice" means the individual's expression of preference, opportunity for, and active role 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 verbally, through sign language, or by other communication methods.

(18) "Community Developmental Disability Program (CDDP)" means an entity that is responsible for planning and delivery of services for individuals with developmental disabilities in a specific geographic service area of the state operated by or under a contract with the Division or a local mental health authority.

(19) "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.

(20) "Complaint" means a verbal or written expression of dissatisfaction with services or service providers.

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(21) "Complaint Investigation" means an investigation of any complaint that has been made to a proper authority that is not covered by an abuse investigation.

(22) "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.

(23) "Contract" means an agreement between a provider and the Division to provide room, board, care, and services for compensation to an individual of an AFH-DD.

(24) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(25) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that would result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(26) "Day Care" means care, assistance, and supervision of an individual who does not stay overnight. Day care persons shall be counted in the total allowable five individuals of the capacity of the AFH-DD.

(27) "Denial" means the refusal of the Division to issue a license to operate an AFH-DD because the Division has determined that the home or the applicant is not in compliance with one or more of these rules.

(28) "Department" means the Department of Human Services (DHS).

(29) "Developmental Disability" means a disability that originates in the developmental years, that is likely to continue, and significantly impacts adaptive behavior as diagnosed and measured by a qualified professional. Developmental disabilities include mental retardation, autism, cerebral palsy, epilepsy, or other neurological disabling conditions that require training or support similar to that required by individuals with mental retardation, and the disability:

(a) Originates before the individual reaches the age of 22 years, except that in the case of mental retardation, the condition must be manifested before the age of 18;

(b) Originates and directly affects the brain and has continued, or must be expected to continue, indefinitely;

(c) Constitutes a significant impairment in adaptive behavior; and

(d) Is not primarily attributed to a mental or emotional disorder, substance abuse, , personality disorder, learning disability, or Attention Deficit and Hyperactivity Disorder.

(30) "Direct Nursing Services" means the provision of individual-specific advice, plans, or interventions, based on nursing process as outlined by the Oregon State Board of Nursing, by a nurse at the home. Direct nursing service differs from administrative nursing services.

(31) "Director" means the Director of the Department, or that person's designee.

(32) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(33) "Domestic Animals" means any various animals domesticated so as to live and breed in a tame condition. Examples of domestic animals are dogs, cats, and domesticated farm stock.

(34) "Enjoin" means to prohibit by judicial order.

(35) "Entry" means admission to a Division-funded developmental disability service. For the purpose of these rules "entry" means admission to an AFH-DD.

(36) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of AFH's that the Director finds are equal to or superior to the requirements of ORS 443.705 to 443.825 and that has entered into an agreement with the Department to license, inspect, and collect fees according to the provisions of ORS 443.705 to 443.825.

(37) "Exit" means either termination from a Division-funded developmental disability service or transfer from one funded program to another. Exit does not mean transfer from an AFH-DD to another AFH-DD of the same provider in the same county.

(38) "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.

(39) "Founded Reports" means the Department's Children, Adults, and Families Division or Law Enforcement Authority (LEA) determination, 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) "Guardian" means a parent for individuals under 18 years of age, or a person or agency appointed and authorized by an Oregon court to make decisions about services for an individual.

(41) "Health Care Provider" means a 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.

(42) "Hearing" means the formal process following an action that would terminate, suspend, or deny a license. This is a formal process required by ORS chapter 183. A hearing is also known as a Medicaid Fair Hearing, Contested Case Hearing, and Administrative Hearing.

(43) "Home" for the purpose of these rules means the physical structure in which individuals live. Home is synonymous with AFH-DD.

(44) "Homelike" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services and encourages independence, choice, and decision making by the individuals.

(45) "House Rules" means written and posted rules governing house activities in the AFH-DD. These rules may not conflict with the AFH Bill of Rights.

(46) "Incident Report" means a written report of any injury, accident, acts of physical aggression, use of protective physical interventions, or unusual incident involving an individual.

(47) "Independence" means the extent to which individuals with developmental disabilities exert control and choice over their own lives.

(48) "Individual" means a person age 18 or older residing in an AFH-DD regardless of source of compensation. The terms "individual" and "client" are synonymous.

(49) "Individual Support Plan (ISP)" means the written details of the supports, activities, and resources required for an individual to achieve personal goals. The ISP is developed at minimum annually, and as needed as the individual's support needs change, to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP is the individual's plan of care for Medicaid purposes. .

(50) "Individual Support Plan Team (ISP) Team" means a team composed of the individual served, agency representatives who provide service to the individual including the AFH-DD provider, services coordinator, the individual's legal guardian (if any), and may include family or other persons requested to develop the ISP or requested by the individual. If the individual is unable to, or does not express a preference, the ISP team shall determine appropriate team membership.

(51) "License" means a document granted by the Division to applicants who are in compliance with the requirements of these rules.

(52) "Licensed Medical Professional" means a person who 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.

(53) "Licensee" means a person or business to whom a license is granted.

(54) "Limited License" means a license is issued to a provider who intends to provide care for compensation to a specific individual who is unrelated to the provider but with whom there is an established relationship.

(55) "Majority Agreement" means for purposes of entry, exit, transfer, and annual ISP team meetings, that no one member of the ISP team has the authority to make decisions for the team unless so authorized by the team process. Providers, families, the CDDP, advocacy agencies, and individuals are considered as one member of the ISP team for the purpose of reaching majority agreement.

(56) "Mandatory Reporter" means any public or private official who:

(a) For the purpose of these rules, is a provider, resident manager, caregiver, or volunteer, per OAR 411-020-0002 working with individuals 18 years and older, and while acting in an official capacity, comes in contact with and has reasonable cause to believe an adult with developmental disabilities has suffered abuse, or comes in contact with any person whom the official has reasonable cause to believe abused an adult with developmental disabilities. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(b) For the purpose of these rules, is a provider, resident manager, caregiver, or volunteer, per OAR 411-020-0002 working with individuals birth to 17 years of age, and comes in contact with and has reasonable cause to believe a child has suffered abuse, or comes in contact with any person

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whom the official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the reporter's official capacity. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman, attorney, or guardian ad litem appointed under ORS 419B.231 shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.

(57) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt derivative, mixture, or preparation of the plant or its resin. Marijuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Legal medical marijuana" refers to the use of marijuana authorized under the Oregon Medical Marijuana Act (OMMA), ORS 475.300 to ORS 475.346.

(58) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to an individual's body that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the individual's body.

(59) "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.

(60) "Mental Health Assessment" means the determination of an individual's need for mental health services by interviewing the individual and obtaining all pertinent biopsychosocial information, as identified by the individual, family, and collateral sources that:

(a) Addresses the current complaint or condition presented by the individual;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(61) "Modified Diet" means the texture or consistency of food or drink is altered or limited. Examples include but are not limited to, no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, bread only soaked in milk.

(62) "Monitoring" means the periodic review of the implementation of services identified in the ISP and the quality of services delivered by other organizations.

(63) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse (RN) or licensed practical nurse (LPN) pursuant to ORS chapter 678.

(64) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are taught or delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel, as governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.

(65) "Nursing Care Plan" means a plan of care developed by a registered nurse that describes the medical, nursing, psychosocial, and other needs of the individual and how those needs shall be met. The Nursing Care Plan includes which tasks shall be taught or delegated to the provider and caregiver.

(66) "Occupant" means anyone residing in or using the facilities of the AFH-DD including individuals, licensees, resident manager, friends, family members, day care persons, and boarders.

(67) "Oregon Intervention System (OIS)" means a system of providing training to people who work with designated individuals to intervene physically or non-physically to keep individuals from harming self or others. OIS is based on a proactive approach that includes methods of effective evasion, deflection, and escape from holding.

(68) "Over the Counter Topical" means a medication that is purchased without a prescription and is applied to the skin and not in an orifice.

(69) "Prescription Medication" means any medication that requires a physician prescription before it may be obtained from a pharmacist.

(70) "PRN (pro re nata)" means the administration of a medication to an individual on an 'as needed' basis.

(71) "Protection" and "Protective Services" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, and to safeguard an individual's person, property, and funds.

(72) "Protective Physical Intervention" means:

(a) Any manual physical holding of or contact with an individual that restricts the individual's freedom of movement; and

(b) The use of any physical action to maintain the health and safety of an individual or others during a potentially dangerous situation or event,

(73) "Provider" means the person licensed to operate an AFH-DD who is responsible for the provision of room, board, care, services to individuals living in the AFH-DD, and the daily operation of the AFH-DD. Applicant, provider, licensee, and operator are all synonymous terms.

(74) "Provisional License" means a 60-day license issued to a qualified person in an emergency situation when the licensed provider is no longer overseeing the operation of the adult foster home. The qualified person must meet the standards of OAR 411-360-0110 and OAR 411-360-0070.

(75) "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.

(76) "Qualified Mental Health Professional" means a person who meets both of the following:

(a) Holds at least one of the following educational degrees:

(A) Graduate degree in psychology;

(B) Bachelor's degree in nursing and licensed in Oregon;

(C) Graduate degree in social work;

(D) Graduate degree in a behavioral science field;

(E) Graduate degree in recreational, art, or music therapy;

(F) Bachelor's degree in occupational therapy and licensed in Oregon;

and

(b) Whose education and experience demonstrates the competencies to:

(A) Identify precipitating events;

(B) Gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts;

(C) Assess family, social, and work relationships;

(D) Conduct a mental status examination;

(E) Document a multiaxial DSM diagnosis;

(F) Write and supervise a Treatment Plan;

(G) Conduct a mental health assessment; and

(H) Provide individual, family, or group therapy within the scope of his or her practice.

(77) "Resident Manager" means an employee of the provider who lives in the AFH-DD and is directly responsible for the care of individuals on a day-to-day basis.

(78) "Respite" means intermittent services provided on a periodic basis, but not more than 14 consecutive days, for the relief of, or due to the temporary absence of those persons normally providing care for the individual. Respite services may include both day or overnight care. Respite care individuals must be counted in the total allowable five individuals in the home.

(79) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(80) "Revocation" means the action taken by the Division to rescind an AFH-DD license after the Division has determined that the AFH-DD provider is not in compliance with one or more of these rules.

(81) "Room and Board" means the provision of meals, a place to sleep, laundry, basic utilities, and housekeeping. Room and board does not include provision of care.

(82) "Self-Administration of Medication" means the individual manages and takes his or her own medication, identifies his or her medication and the times and methods of administration, places the medication internally in or externally on his or her own body without caregiver assistance upon the written order of a physician, and safely maintains the medication without supervision.

(83) "Services" means those activities that assist the individuals to develop appropriate skills to increase or maintain their level of functioning. Services available in the community and arranged for by the provider may include mental health services, habilitation services, rehabilitation services, social services, ADL's, medical, dental, and other health care services, educational services, financial management services, legal services, vocational services, transportation, recreational and leisure activities, and other services required to meet an individual's needs as defined in the ISP.

(84) "Services Coordinator" means an employee of the CDDP or the Division, who is selected to plan, procure, coordinate, monitor ISP service-

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es, and to act as a proponent for individuals with developmental disabilities. The term "case manager" is synonymous with "services coordinator".

(85) "Special Diet" means that the amount, type of ingredients, or selection of food or drink items is limited, restricted, or otherwise regulated under a physician's order. Examples include but are not limited to low calorie, high fiber, diabetic, low salt, lactose free, low fat diets. This does not include diets where extra or additional food is offered, but may not be eaten, for example, offer prunes each morning at breakfast and include fresh fruit with each meal.

(86) "Subject Individual" means:

(a) Any person 16 years of age or older including:

(A) All licensed adult foster home providers and provider applicants.

(B) All persons intending to work in the adult foster home including, but not limited to, direct caregivers and potential caregiver's in training;

(C) Occupants, excluding individuals, residing in or on the premises of the proposed or currently licensed adult foster home including household members and boarders; or

(D) Volunteers if allowed unsupervised access to individuals.

(b) Subject individual does not apply to:

(A) Individuals of the AFH-DD and individuals' visitors;

(B) Persons who live or work on the AFH-DD who do not:

(i) Have regular access to the home for meals; or

(ii) Have regular use of the adult foster home's appliances or facilities; and

(iii) Have unsupervised access to individuals or individuals' personal property.

(C) Persons employed by a private business that provides services to individuals and is not regulated by the Department.

(87) "Substantiated" means an abuse investigation has been completed by the Department or the Department's designee and the preponderance of the evidence establishes the abuse occurred.

(88) "Substitute Caregiver" means any person who provides care and services in an adult foster home, and left in charge of individuals for any period of time, having access to individual records under the jurisdiction of the Division.

(89) "Suspension of License" means an immediate withdrawal of the approval to operate an AFH-DD after the Division determines that there is a threat to the health or safety of individuals.

(90) "These Rules" mean the rules in OAR chapter 411, division 360.

(91) "Transition Plan" means a written plan for the period of time between an individual's entry into the AFH-DD and when the individual's ISP is developed and approved by the ISP team. The plan must include a summary of the services necessary to facilitate adjustment to the AFH-DD, the supports necessary to ensure health and safety, and the assessments and consultations necessary for the ISP development.

(92) "Unusual Incident" means incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of an individual requiring a non-routine visit to a health care practitioner, suicide attempts, death of an individual, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(93) "Urgent Medical Need" means the onset of psychiatric or medical symptoms requiring attention within 48 hours to prevent a serious deterioration in an individual's mental or physical condition.

(94) "Variance" means an exception from a regulation or provision of these rules that may be granted by the Division, upon written application by the provider.

(95) "Young Adult" for the purpose of these rules means a young person age 18 through 21 who resides in the AFH-DD, under the custody of the Department, voluntarily, or under guardianship.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0030

Variance

(1) A provider or applicant may apply to the Division for a variance from a provision of these rules. The provider must justify to the Division that such a variance does not jeopardize the health or safety of the individuals. If the variance applies to an individual's services, the provider must provide evidence that the variance is consistent with a currently approved ISP.

(2) No variance shall be granted from a regulation or provision of these rules pertaining to the limit of five individuals, inspections of the AFH-DD, civil, legal, and human rights, and inspection of the public files. No variance related to fire and life safety shall be granted by the Division

without prior consultation with the local fire department or the local fire department's designee.

(3) Variances shall be granted in writing on a Division approved form.

A variance granted to one AFH-DD provider does not constitute a precedent for any other AFH-DD provider.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0040

License Required

(1) Any home that meets the definition of an AFH-DD as defined in OAR 411-360-0020 must apply for and obtain a license from the Division or an exempt area county.

(2) A person or entity may not represent themselves as operating an AFH-DD or accept placement of an individual without being licensed.

(3) No person, employed and requiring a criminal records check may be a provider, resident manager, substitute caregiver, or otherwise be in training, or employed by the provider, or reside in or on the property of an AFH-DD who:

(a) Has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(b) Has not complied with Department rules for review of criminal records in accordance with OAR 407-007-0200 to 407-007-0370; or

(c) Has been disapproved to work based on current Department policy and procedures for criminal records checks in accordance with OAR 407-007-0200 to 407-007-0370.

(d) This provision does not apply to individual service recipients of the AFH-DD.

(4) Section (3)(a) of this rule does not apply to employees hired prior to July 28, 2009.

(5) Any home that meets the definition of a limited license AFH-DD as defined in OAR 411-360-0020 must have a license from the Division if receiving compensation from the Department or if the provider is privately paid.

(a) To qualify for this license and for compensation from the Department, the provider must submit a completed application, appropriate licensing fee, physician's statement, a criminal records check, a background check in regards to founded abuse of children and substantiated abuse of an adult, demonstrate a clear understanding of the individual's care needs, and acquire any additional training necessary to meet the specific needs of the individual.

(b) The provider must meet the standards of an AFH-DD, and meet minimal fire safety compliance, including the installation of smoke detectors and fire extinguishers, and obtain any training deemed necessary by the Division or the Division's designee to provide adequate care for the individual.

(c) The limited license shall be limited to the care of the named individual only and may not be transferred to another person

(6) Any AFH-DD that meets the definition of a provisional license, due to an emergency situation in which the licensed provider is no longer able to oversee the operation of the AFH-DD, must be licensed by the Division. The applicant for the provisional license must meet the standards in OAR 411-360-0070 and 411-360-0110.

Stat. Auth.: ORS 410.070 & 409.050

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 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10

411-360-0050

License Application and Fees

(1) A complete written application must be submitted by the applicant on forms supplied by the Division. The application is not complete until the required information is submitted to the Division with the required non-refundable fee. Incomplete applications are void after 60 days of the date the application form is received by the Division. Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an AFH-DD is to be operated.

(3) An application for a home that has a resident manager must include a completed application for the resident manager on the form supplied by the Division.

(4) The application must include:

(a) The maximum capacity to be served by the home;

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(b) A listing of all individuals living in the home and receiving care. This must include family members needing care and respite and day care persons;

(c) A list of all other occupants living in the home or on the property including family members, friends, and room and board occupants;

(d) A physician's statement on a form supplied by the Division regarding the AFH-DD applicant's ability to provide care;

(e) A completed Financial Information Sheet on a form supplied by the Division;

(f) A signed criminal records check and if needed, the mitigating information and fitness determination form for each person who shall have regular contact with the individuals, including the provider, the resident manager, caregivers, and other occupants over the age of 16 (excluding individual service recipients);

(g) A signed consent form for a background check with regards to abuse of children;

(h) Founded reports of child abuse or substantiated abuse allegations, with dates, locations, and resolutions of those reports for all persons living in the home, as well as all applicant or provider employees, independent contractors, and volunteers;

(i) A floor plan for each floor of the house showing the location and size of rooms indicating the rooms that are to be service recipient's bedrooms, caregiver sleeping rooms, rooms of other occupants of the home, the location and size of windows, fire exit doors, smoke detectors, fire extinguishers, escape routes, and wheelchair ramps;

(j) If requesting a license to operate more than one AFH-DD, a plan covering administrative responsibilities, staffing and caregiver qualifications, and evidence of financial responsibility;

(k) A \$20.00 per bed non-refundable fee for each individual service recipient (includes all private pay and publicly funded individuals, but does not include day care and family members);

(l) References from three persons unrelated to the applicant (one professional, one employment, and one other), who can attest to the applicant's character and capabilities;

(m) A written plan for coverage of resident manager absences from the AFH-DD that has been provided to the local CDDP and the Division;

(n) A written description of the daily operation of the adult foster home, including the schedule of the provider, resident manager, and caregivers;

(o) A copy of the AFH-DD's house rules; and

(p) A mailing address if different from the AFH-DD, and a business address for electronic mail.

(5) After receipt of the completed application materials, including the non-refundable fee, the Division or the Division's designee shall investigate the information submitted and inspect the home. Upon submission and completion of the application and the process described, the Division shall determine compliance with these rules.

(6) The applicant shall be given a copy of the inspection form identifying any areas of noncompliance and specifying a timeframe for correction, but no later than 60 days from date of inspection.

(7) Deficiencies noted during an inspection of the home must be corrected in the timeframe specified by the Division or the Division's designee. Applicants must be in compliance with these rules before a license is issued. If cited deficiencies are not corrected within the timeframes specified by the Division or the Division's designee, the application shall be denied. The application fee is non-refundable.

(8) Applicants must attend a local orientation offered by the local CDDP, prior to being licensed.

(9) The applicant may withdraw a new or renewal application at any time during the application process by notifying the Division in writing. The application fee is non-refundable.

(10) An applicant whose license has been revoked or voluntarily surrendered during a revocation or non-renewal process, or whose application has been denied, may not be permitted to make a new application for one year from the date that the revocation, surrender, or denial is final. The time period may be for a longer period of time if specified in the order revoking or denying the license.

(11) All monies collected under these rules shall be paid to the Quality of Care Fund.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0060

Capacity

(1) The AFH-DD maximum capacity is limited to five adults who require care and are unrelated to the provider by blood, marriage, or adoption.

(2) The number of individuals permitted to reside in an AFH-DD shall be determined by the ability of the caregiver to meet the care needs of the individuals, fire safety standards, and compliance with the physical structure standards of these rules. Determination of maximum capacity shall include consideration of total household composition including all children, adult relatives, and elderly. In determining maximum capacity, consideration shall be given to whether children over the age of five have a bedroom separate from their parents and the number of children or other individuals living in the AFH-DD requiring care.

(3) Individuals receiving respite service are included in the licensed capacity of the home.

(4) Individuals receiving day care services are included in the licensed capacity of the home.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0070

Classification of Adult Foster Homes for Persons with Developmental Disabilities

A Provisional, Limited, Level 1, Level 2B, or Level 2M license may be issued by the Division based upon the qualifications of the applicant and the resident manager (if applicable) and compliance with the following requirements.

(1) PROVISIONAL AFH-DD LICENSE. A Provisional AFH-DD license may be issued by the Division if:

(a) There is an emergency situation where the current licensed provider is no longer overseeing the operation of the AFH-DD.

(b) The applicant meets the standards of OAR 411-360-0110(1)(a-f)(h-k).

(c) A provisional license is valid for 60 days from the date of issue and is not renewable.

(2) LIMITED AFH-DD LICENSE. A Limited AFH-DD license may be issued by the Division if:

(a) The applicant meets the qualifications listed in OAR 411-360-0110(1)(a-k) and the home meets the requirements listed in OAR 411-360-0130.

(b) The applicant acquires any additional training necessary to meet the specific needs of the individual.

(c) The license shall be limited to the care of the named person only and the individual receiving care is named on the license.

(3) LEVEL 1 AFH-DD LICENSE. A Level 1 AFH-DD license may be issued by the Division if the applicant and resident manager (if applicable):

(a) Meet the qualifications listed in OAR 411-360-0110 and completes the training requirements outlined in OAR 411-360-0120; and

(b) The home and applicant are in compliance with OAR 411-360-0080.

(4) LEVEL 2B AFH-DD LICENSE. If a provider serves or intends to serve more than one individual who exhibits behavior that pose a significant danger to the individual or others, the provider must be licensed as a Level 2B AFH-DD.

(a) A Level 2B AFH-DD license may be issued by the Division only if the applicant and resident manager (if applicable) has met the criteria for a Level 1 AFH-DD license and in addition, has met the following criteria:

(A) Has the equivalent of one year of full-time experience in providing direct care to individuals with developmental disabilities;

(B) Has two years of full time experience providing care and support to individuals who exhibit behavior that poses significant risk to the individual or others as described in subsection (4)(a)(E)(i-iv) of this section;

(C) Has completed OIS-G, OIS-IF, or OIS-C certification by a state approved OIS trainer;

(D) Has completed additional hours of advanced behavior intervention training per year, based on the support needs of the individual, if available from the Division; and

(E) Intends to provide care and support to more than one individual who exhibit behavior that poses a significant danger to the individual. Examples include but are not limited to:

(i) Acts or history of acts that have caused injury to self or others requiring medical treatment;

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(ii) Use of fire or items to threaten injury to persons or damage to property;

(iii) Acts that cause significant damage to homes, vehicles, or other properties; or

(iv) Actively searching for opportunities to act out thoughts that involve harm to others.

(b) A Level 2B AFH-DD provider must have a Transition Plan for each individual upon entry and a Behavior Support Plan within 60 days of placement that:

(A) Emphasizes the development of the functional alternative and positive approaches to behavior intervention;

(B) Uses the least intervention possible;

(C) Ensures that abusive or demeaning intervention shall never be used; and

(D) Is evaluated by the ISP Team through review of specific data at least every six months to assess the effectiveness of the procedures.

(c) A Level 2B AFH-DD provider may not employ a resident manager or substitute caregiver who does not meet or exceed the training classification standard for the AFH-DD.

(d) The Level 2B AFH-DD may not admit individuals whose care needs exceed the licensed classification of the AFH-DD home and may not admit individuals without prior approval of the CDDP.

(5) LEVEL 2M AFH-DD LICENSE.

(a) A provider must be licensed as a Level 2M AFH-DD if the provider serves or intends to provide care and support to more than one individual who has a medical condition that is serious and could be life threatening. Examples include but are not limited to:

(A) Brittle diabetes or diabetes not controlled through medical or physical interventions;

(B) Significant risk of choking or aspiration;

(C) Physical, intellectual, or mental limitations that render the individual totally dependent on others for access to food or fluids; or

(D) Mental health or alcohol or drug problems that are not responsive to treatment interventions.

(b) A Level 2M AFH-DD license may be issued by the Division only if the applicant or resident manager has met the requirements for a Level 1 AFH-DD and meets the following additional criteria:

(A) Has the equivalent of one year of full-time experience in providing direct care to individuals with developmental disabilities;

(B) Is a health care professional such as a registered nurse or licensed practical nurse, or has the equivalent of two years full-time experience providing care and support to individuals who have a medical condition that is serious and could be life-threatening as described in subsection (5)(b)(E)(i-v) of this section;

(C) Can provide current satisfactory references from at least two medical professionals, such as a physician, physician's assistant, nurse practitioner, or registered nurse, who have direct knowledge of the applicant's ability and past experiences as a caregiver;

(D) Has fulfilled a minimum six of the twelve hours of annual training requirements in specific medical training; and

(E) Intends to provide care and support to more than one individual who has a medical condition that is serious and could be life threatening. Examples include but are not limited to:

(i) Brittle diabetes or diabetes not controlled through medical or physical interventions;

(ii) Significant risk of choking or aspiration;

(iii) Physical, intellectual, or mental limitations that render the individual totally dependent on others for access to food or fluids;

(iv) Mental health or alcohol or drug problems that are not responsive to treatment interventions; and

(v) A terminal illness that requires hospice care.

(c) A Level 2M AFH-DD provider must have a Transition Plan for each individual upon entry and develop, with the ISP Team, a Medical Support Plan within 30 days of placement or whenever there is a change in health status for each individual who has a medical condition that is serious and could be life threatening as described in subsection (5)(b)(E)(i-v) of this section.

(d) A provider with a 2M licensed AFH-DD may not employ a resident manager or substitute caregiver who does not meet or exceed the training classification standard for a 2M AFH-DD.

(e) The 2M AFH-DD may not admit individuals whose care needs exceed the licensed classification of the AFH-DD home and may not admit individuals without prior approval of the CDDP.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0080

Issuance of a License

(1) The Division shall issue a license within 60 days after the Division has received the completed application materials, if the home and applicant are found to be in compliance with these rules. The license shall state the name of the provider, resident manager, address of premises to which license applies, the maximum capacity, expiration date, and classification level. The licensee must visibly post the license in the AFH-DD home and be available for inspection at all times.

(2) A limited license may be issued to a provider for the care of a specific individual. A provider with a limited license may not accept other placements. A provider with a limited license must meet the standards of an AFH-DD and acquire any additional training necessary to meet the specific needs of the individual and may be subject to the requirements of:

(a) OAR 411-360-0140, Standards and Practices for Health Care;

(b) OAR 411-360-0160, Behavior Supports;

(c) OAR 411-360-0170, Documentation and Record Requirements;

(d) OAR 411-360-0150, General Practices; and

(e) OAR 411-360-0190, Standards for Admission, Transfers, Respite, Crisis Placements, Exits and Closure.

(3) Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the Division may issue a 60-day provisional license to a qualified person, if the Division determines that an emergency situation exists after being notified that the licensed provider is no longer overseeing the operation of the AFH-DD. A person shall be considered to be a qualified person if they are 21 years of age and meet the qualifications of a caregiver per OAR 411-360-0110(1)(a-f)(h)(i)(k).

(4) The Division may attach conditions to the license that limit, restrict, or specify other criteria for operation of the AFH-DD. The conditions must be posted with the license in the AFH-DD and be available for inspection at all times.

(5) A condition may be attached to a license that restricts admissions to the AFH-DD.

(6) An AFH-DD license is not transferable or applicable to any location or persons other than those specified on the license.

(7) When an AFH-DD is to be sold or otherwise transferred, the new provider must apply for, and obtain, a license prior to the transfer of operation of the AFH-DD.

(8) A license is valid for one year unless revoked or suspended.

(9) The Division shall not issue a license to operate an additional AFH-DD to a provider who has failed to achieve and maintain substantial compliance with the rules and regulations while operating any existing home or homes.

(10) The Division shall not issue an initial license unless:

(a) The applicant and AFH-DD are in compliance with ORS 443.705 to 443.825 and these rules;

(b) The Division or the Division's designee has completed an inspection of the AFH-DD;

(c) The Department has completed a criminal records check on the applicant, resident manager (if applicable), and any subject individual, other than an individual, 16 years of age or older who will be residing on the property, in the AFH-DD, or employed by the AFH-DD;

(d) The applicant has demonstrated to the Division the financial ability and resources necessary to operate the AFH-DD;

(e) The Division has checked the record of sanctions available from its files, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry pursuant to ORS 441.678; and

(f) The Department has conducted a background check of the provider or resident manager with regard to founded abuse of children or substantiated abuse of adults.

(11) If a resident manager changes during the period of time the license covers, the provider must notify the Division immediately and identify who shall be providing care. The provider must submit a request for a change of resident manager to the Department, a criminal records check, a current consent form to conduct a background check for child abuse, and a payment fee of \$10.00. Upon a determination the applicant meets the requirements of a resident manager and the applicant has received the Division's required AFH-DD training and passed the test, a revised license shall be issued with the name of the new resident manager.

(12) In seeking an initial license the burden of proof shall be upon the provider of the AFH-DD to establish compliance with ORS 443.705 to 443.825 and these rules.

Stat. Auth.: ORS 410.070 & 409.050

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

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411-360-0090

Renewal of a License

(1) The provider must submit a renewal application and fee prior to the expiration date that shall keep the license in effect until a new license is issued or a final order of non-renewal is issued by the Division. If the renewal application and fee are not submitted prior to the expiration date, the AFH-DD shall be treated as an unlicensed home subject to administrative sanctions.

(2) The renewal application must include the same information and fee as required for a new application. A physician's statement, financial information sheet, house rules, and floor plan are not required if the Division or the Division's designee reasonably determines that this information has not changed.

(3) The Division or the Division's designee may investigate any information in the renewal application and shall conduct an inspection of the AFH-DD.

(4) The provider shall be given a copy of the inspection form citing any deficiencies and a time frame for correction, but no longer than 60 days from the date of inspection.

(5) The Division may require the AFH-DD to correct deficiencies prior to issuing a license renewal. If cited deficiencies are not corrected within the time frame specified by the Division or the Division's designee, the renewal application may be denied.

(6) The Division shall not renew a license unless:

(a) The provider and the AFH-DD are in compliance with ORS 443.705 to 443.825 and these rules;

(b) The Division or the Division's designee has completed an inspection of the AFH-DD; and

(c) The Department has completed a criminal records check as required by ORS 181.534 and 443.735 on the provider, resident manager (if applicable), and any subject individual, other than a service recipient, 16 years of age or older who shall be residing on the property, in the AFH-DD, or employed by the AFH-DD provider.

(7) In seeking a renewal of a license when an AFH-DD has been licensed for less than 24 months, the burden of proof shall be upon the provider of the AFH-DD to establish compliance with ORS 443.705 to 443.825 and these rules.

(8) In proceedings for renewal of a license when an AFH-DD has been licensed for at least 24 continuous months, the burden of proof shall be upon the Division to establish noncompliance with ORS 443.705 to 443.825 and these rules.

Stat. Auth.: ORS 410.070 & 409.050

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 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10

411-360-0100

Contracts

(1) Providers who care for public assistance individuals must enter into a contract with the Department and follow Department rules and contract requirements governing reimbursement for services and refunds.

(2) Providers who care for private paying individuals must enter into a signed contract with the individual or person paying for care. This contract must include but is not limited to:

(a) An ISP;

(b) A schedule of rates;

(c) Conditions under which the rates may be changed; and

(d) The AFH-DD's policy on refunds at the time of hospitalization, death, discharge, or voluntary move.

(3) A thirty day prior written notification of increases, additions, and other

modifications of the rates must be given by the provider to private individuals or persons paying for care, unless the change is due to a medical emergency resulting in a greater level of care, in which case the notice must be given within 10 days of the change.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0110

Qualifications for Adult Foster Home Providers, Resident Managers and Other Caregivers

(1) An AFH-DD provider must meet the following qualifications:

(a) Be at least 21 years of age.

(b) Live in the residence that is to be licensed as the AFH-DD or if the provider does not live in the residence there must be a resident manager

who lives in the AFH-DD. For purposes of these rules, to live in the AFH-DD, the provider must sleep in the AFH-DD four nights per week.

(c) Provide evidence satisfactory to the Division regarding experience, training, knowledge, interest, and concern in providing care to individuals with a developmental disability. Such evidence may include but not be limited to:

(A) Certified nurse's aide training;

(B) Nursing home, hospital, or institutional work experience;

(C) Licensed practical nurse or registered nurse training and experience;

(D) Training approved by the Division; or

(E) Experience in caring for individuals with a developmental disability and home management skills.

(d) Possess the physical health, mental health, good judgment, and good personal character determined necessary by the Division to provide 24 hour care for adults who are developmentally disabled. Applicants must have a statement from a physician, on a form provided by the Division, that they are physically and mentally capable of providing care. Applicants with documented histories or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Division of successful treatment and rehabilitation and references regarding current condition.

(e) All subject individuals must undergo a criminal records check in accordance with OAR 407-007-0020 to 407-007-0370 and under ORS 181.534, and be determined fit for licensure by the Division. The Division shall evaluate and verify information regarding criminal history.

(A) A criminal records check must be completed prior to a subject individual's change in position (for example, changing from substitute caregiver to resident manager).

(B) Effective July 28, 2009, public funds may not be used to support, in whole or in part, a provider, a resident manager, providers' employees, alternate caregivers, volunteers, or any other subject individual under OAR 407-007-0200 to 407-007-0370, who is subject to criminal background checks, and who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(C) Effective July 28, 2009, a person may not be authorized as a provider or meet qualifications as described in this rule if the person is subject to criminal records checks and who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(D) Occupants who do not provide care in the home but require a criminal records check on or after July 28, 2009, shall have a weighing test applied to the criminal records check for approval purposes.

(E) PORTABILITY OF CRIMINAL RECORDS CHECK APPROVAL. Any person meeting the definition of subject individual may be approved for one position to work in multiple homes within the jurisdiction of the qualified entity as defined in OAR 407-007-0200 to 407-007-0370. The Department's Background Check Request Form must be completed by the subject individual to show intent to work at various homes.

(F) Section (1)(e)(B)(C) of this rule does not apply to caregivers of the AFH-DD hired prior to July 28, 2009.

(f) Have no founded reports of child abuse or a substantiated abuse allegation.

(g) The applicant must have the financial ability and must provide proof that the applicant has sufficient liquid resources to pay the costs of operating the home for two months without solely relying on potential service and room and board payments.

(A) The applicant must provide the Division with a list of all unsatisfied judgments, liens, and pending lawsuits in which a claim for money or property is made against the applicant, all bankruptcy filings by the applicant, and all unpaid taxes due from the applicant.

(B) The Division may require or permit the applicant to provide a current credit report to satisfy this financial requirement.

(C) The Division may not issue an initial license to an applicant who has been adjudged bankrupt more than once.

(D) If the applicant has any unpaid judgments (other than a current judgment for support), pending lawsuits, liens, or unpaid taxes, the Division shall require the applicant to provide proof that the applicant has the amount of resources necessary to pay those claims.

(E) If the applicant is unable to demonstrate the financial ability and resources as required, the Division may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan as a condition of initial licensure.

(h) Be literate and capable of understanding written and oral orders, communicating with individuals, physician, case manager, and appropriate

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others, and be able to respond appropriately to emergency situations at all times.

(i) If transporting individuals by motorized conveyance, have a current Oregon driver's license in compliance with the Department of Motor Vehicles laws and vehicle insurance as required by the state of Oregon.

(j) Meet the requirements of the licensing classification of the AFH-DD described in OAR 411-360-0070 as indicated on the application.

(k) Document annual review of responsibility for mandatory reporting of abuse or neglect of an individual on forms provided by the Division.

(2) An application for employment in any capacity in an AFH-DD must include a question asking whether the applicant has been found to have committed abuse

(3) The resident manager must meet the provider qualifications listed in subsections (1)(a-f)(h-k) of this rule.

(4) Substitute caregivers left in charge of individuals for any period of time must have access to individual records and meet the following qualifications:

(a) Be at least 18 years of age;

(b) Have a criminal records check in accordance with OAR 407-007-0200 to 407-007-0370. A person may not be authorized as a substitute caregiver or meet qualifications as described in this rule if the substitute caregiver has been hired on or after July 28, 2009, or is subject to criminal records checks beginning July 28, 2009 as required by administrative rule, and the substitute caregiver has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(c) Be notified annually of the substitute caregiver's responsibility as a mandatory reporter of abuse or neglect and documented on forms provided by the Division;

(d) Be literate and capable of understanding written and oral orders, communicating with individuals, physician, case manager, and appropriate others, and be able to respond appropriately to emergency situations at all times;

(e) Know fire safety and emergency procedures;

(f) Have a clear understanding of job responsibilities, have knowledge of ISP's, and be able to provide the care specified for each individual's needs;

(g) Be able to meet the qualifications of a resident manager when left in charge of an AFH-DD for 30 days or longer;

(h) Not be an individual service recipient of the AFH-DD;

(i) If transporting individuals by motorized conveyance, have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the state of Oregon;

(j) Possess the physical health, mental health, good judgment, and good personal character determined necessary by the Division to provide care for adults who are developmentally disabled. Substitute caregivers with documented histories or substantiated complaints of substance abuse or mental illness must provide evidence satisfactory to the Division of successful treatment and rehabilitation and references regarding current condition;

(k) Must meet the training requirements of the licensing classification of the AFH-DD in OAR 411-360-0120; and

(l) Must disclose on application for employment if they have been found to have committed abuse,

(5) Providers may not hire or continue to employ a resident manager or substitute caregiver that does not meet the requirements stated in this rule.

(6) A provider is responsible for the supervision and training of resident managers and substitute caregivers and their general conduct when acting within the scope of their employment or duties.

(7) Any provider, resident manager, caregiver, volunteer, or other subject individual 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 designee within 24 hours.

Stat. Auth.: ORS 410.070 & 409.050

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 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10

411-360-0120

Training Requirements for Providers

(1) All providers must complete the Division's Basic Training Course that includes but is not limited to taking and passing an examination on course work and necessary skills. Failure to obtain a passing score on the Basic Training Examination may result in denial or non-renewal of a license pursuant to OAR 411-360-0270. If the applicant fails the first test,

a second test may be taken. If the applicant fails the second test, the application may be denied.

(2) All resident manager applicants must complete the Division's Basic Training Course and pass the Basic Training Examination prior to becoming a resident manager. If the applicant fails the first test, a second test may be taken. If the applicant fails the second test, the application may be denied.

(3) All substitute caregivers left in charge of the home in the provider's or resident manager's absence for any length of time must complete the Division's Basic Training Course and pass the Basic Training Examination prior to giving care.

(4) The provider or resident manager must keep documentation of the completed Division Basic Training Course and annual training of substitute caregivers including the date of the training, subject content, name of the agency or organization providing the training, and the number of training hours.

(5) Prior to placement of individuals in the home, the provider must complete an AFH-DD orientation provided by the local CDDP that at a minimum covers the requirements of the rules governing AFH-DD services.

(6) All provider and resident manager applicants must have current certification in first aid by a training agency approved by the Division.

(7) The Division requires at least 12 hours of Division approved training annually for the provider, resident manager, and substitute caregivers of an AFH-DD that must be documented in the record.

(8) If a provider, resident manager, or substitute caregiver is not in compliance with these rules, the Division may require additional training in the deficient area, whether or not the 12-hour approved annual training requirement has already been met.

(9) Providers, resident managers, or substitute caregivers who perform tasks of care that are delegated by a registered nurse or taught by a physician must receive appropriate training and monitoring from a registered nurse or physician on performance and implementation of task of care. The delegated tasks of care must be addressed as part of the ISP.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0130

Facility Standards

In order to qualify for or renew a license, an AFH-DD must meet the following provisions.

(1) GENERAL CONDITIONS.

(a) Each AFH-DD must maintain up-to-date documentation verifying they meet applicable local business license, zoning, building and housing codes, and state and local fire and safety regulations for a single-family residence. It is the duty of the provider to check with local government to be sure all applicable local codes have been met. A current floor plan of the house must be on file with the local CDDP.

(b) The building and furnishings must be clean and in good repair and grounds must be maintained. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting. There must be no accumulation of garbage, debris, rubbish, or offensive odors.

(c) Stairways (interior and exterior) must have handrails and be adequately lighted. Yard and exterior steps must be accessible and appropriate to the needs of individuals.

(d) Adequate lighting must be provided in each room, internal and external stairways, and internal and external exit ways. Incandescent light bulbs and fluorescent tubes must be protected and installed per manufacturer's directions.

(e) The heating system must be in working order. Areas of the AFH-DD used by individuals must be maintained at no less than 68 degrees F during the day (when individuals are home) and 60 degrees F during sleeping hours. During times of extreme summer heat, the provider must make every reasonable effort to make the individuals comfortable and safe using ventilation, fans, or air conditioners.

(f) There must be at least 150 square feet of common space, and sufficient comfortable furniture in the AFH-DD to accommodate the recreational and socialization needs of the occupants at one time. Common space may not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space may be required if wheelchairs are to be accommodated.

(g) Providers may not permit individuals to access or use swimming or other pools, hot tubs, saunas, or spas on the premise without supervision. Swimming pools, hot tubs, spas, or saunas must be equipped with sufficient

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safety barriers or devices designed to prevent accidental injury or unsupervised access.

(h) Interior doorways used by individuals must be wide enough to accommodate wheelchairs and walkers if used by individuals.

(i) Marijuana must not be grown in or on the premises of the AFH-DD. Individuals with Oregon Medical Marijuana Program (OMMP) registry cards must arrange for and obtain their own supply of medical marijuana from a designated grower as authorized by OMMP. The licensed provider, the caregiver, other employee, or any occupant in or on the premises must not be designated as the individual's grower and must not deliver marijuana from the supplier.

(2) SANITATION.

(a) A public water supply must be utilized if available. If a non-municipal water source is used, it must be tested for coliform bacteria by a certified agent yearly, and records must be retained for two years. Corrective action must be taken to ensure potability.

(b) If a septic tank or other non-municipal sewage disposal system is used, it must be in good working order.

(c) Garbage and refuse must be suitably stored in readily cleanable, rodent proof, covered containers, pending weekly removal.

(d) Prior to laundering, soiled linens and clothing must be stored in containers in an area separate from food storage, kitchen, and dining areas. Special pre-wash attention must be given to soiled and wet bed linens.

(e) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of rabies or other vaccinations as required by a licensed veterinarian must be maintained on the premises for household pets. Pets not confined in enclosures must be under control and must not present a danger to individuals or guests.

(f) There must be adequate control of insects and rodents, including screens in good repair on doors and windows used for ventilation.

(g) Universal precautions for infection control must be followed in care to individuals. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(h) All caregivers must take precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles, scalpel blades, and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal must be according to local regulations and resources (ORS 459.386 to 459.405).

(3) BATHROOMS.

(a) Must provide for individual privacy and have a finished interior, a mirror, an openable window or other means of ventilation, and a window covering. No person must have to walk through another person's bedroom to get to a bathroom;

(b) Must be clean and free of objectionable odors;

(c) Must have tubs or showers, toilets, and sinks in good repair, and hot and cold water. A sink must be located near each toilet. A toilet and sink must be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located. There must be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(d) Must have hot and cold water in sufficient supply to meet the needs of individuals for personal hygiene. Hot water temperature sources for bathing areas may not exceed 120 degrees F;

(e) Must have shower enclosures with nonporous surfaces. Glass shower doors must be tempered safety glass. Shower curtains must be clean and in good condition. Non-slip floor surfaces must be provided in tubs and showers;

(f) Must have grab bars for toilets, tubs, and showers for individual's safety as required by individual's disabilities;

(g) Must have barrier-free access to toilet and bathing facilities with appropriate fixtures if there are non-ambulatory individuals. Alternative arrangements for non-ambulatory individuals must be appropriate to individual needs for maintaining good personal hygiene; and

(h) Must have adequate supplies of toilet paper for each toilet and soap for each sink. Individuals must be provided with individual towels and wash cloths that are laundered in hot water at least weekly or more often if necessary. Individuals must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, individuals must be provided with individually dispensed paper towels.

(4) BEDROOMS.

(a) Bedrooms for all household occupants must:

(A) Have been constructed as a bedroom when the home was built or remodeled under permit;

(B) Be finished, with walls or partitions of standard construction that go from floor to ceiling, and a door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(C) Be adequately ventilated, heated, and lighted with at least one openable window that meets fire regulations subsection (7)(a) of this rule;

(D) Have at least 70 square feet of usable floor space for each individual or 120 square feet for two individuals; and

(E) Have no more than two persons per room.

(b) Providers, resident managers, or family members must not sleep in areas designated as common use living areas, nor share bedrooms with service recipients.

(c) There must be an individual bed for each individual consisting of a mattress and box springs at least 36 inches wide. Cots, rollaways, bunks, trundles, couches, futons, and folding beds must not be used for individuals. Each bed must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases must be laundered at least weekly, and more often if necessary. Waterproof mattress covers must be used for incontinent individuals. Individual's beds must not be used by day care persons.

(d) Each bedroom must have sufficient separate, private dresser and closet space for each individual's clothing and personal effects, including hygiene and grooming supplies. Individuals must be allowed to keep and use reasonable amounts of personal belongings, and to have private, secure storage space. Drapes or shades for windows must be in good condition and allow privacy for individuals.

(e) Bedrooms must be on ground level for individuals who are non-ambulatory or have impaired mobility.

(f) Individual bedrooms must be in close enough proximity to provider to alert provider to nighttime needs or emergencies, or be equipped with an intercom, or audio monitor as approved by the ISP team.

(g) Bedrooms must have at least one window or exterior door that readily opens from the inside without special tools and that provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height must not be more than 44 inches from the floor level or there must be approved steps or other aids to window egress that may be used by individuals. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or designee.

(h) For AFH-DD homes with one or more employees, smoking regulations in compliance with Oregon's Smokefree Workplace Law must be adopted to allow smoking only in designated areas. Smoking is not permitted in any bedroom including that of an individual, provider, resident manager, caregiver, boarder, or family member.

(5) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each daily menu must include food from the four basic food groups and fresh fruit and vegetables in season unless otherwise specified in writing by the physician. There must be no more than a 14-hour span between the evening meal and breakfast, unless snacks and liquids are served as supplements. Consideration must be given to cultural and ethnic backgrounds, as well as, food preferences of individuals in food preparation. Special consideration must be given to individuals with chewing difficulties and other eating limitations. Food may not be used as an inducement to control the behavior of an individual.

(b) Menus for the coming week that consider individual preferences must be prepared and posted weekly in a location that is accessible to individuals and families. Menu substitutions in compliance with subsection (5)(a) of this rule are acceptable.

(c) MODIFIED OR SPECIAL DIETS. For individuals with physician or health care provider ordered modified or special diets, the provider must:

(A) Have menus for the current week that provide food and beverages that consider the individual's preferences and are appropriate to the modified or special diet; and

(B) Maintain documentation that identifies how modified texture or special diets are prepared and served to individuals.

(d) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Food storage must be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage.

(e) Utensils, dishes, glassware, and food supplies must not be stored in bedrooms, bathrooms, or living areas.

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(f) Meals must be prepared and served in the AFH-DD where individuals live. Payment for meals eaten away from the AFH-DD for the convenience of the provider (e.g. restaurants, senior meal sites) is the responsibility of the provider. Meals and snacks as part of an individual recreational outing are the responsibility of the individual.

(g) Utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with sanitize cycle is recommended.

(h) Food storage and preparation areas and equipment must be clean, free of obnoxious odors, and in good repair.

(i) Home-canned foods must be processed according to the current guidelines of the Oregon Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

(6) TELEPHONE.

(a) A telephone must be provided in the AFH-DD that is available and accessible for individuals' use for incoming and outgoing calls. Telephone lines must be unblocked to allow for access.

(b) Emergency telephone numbers for the local CDDP, police, fire, medical if not served by 911, an emergency number to reach a provider who does not live in the AFH-DD, and any emergency physician and additional persons to be contacted in the case of an emergency, must be posted in close proximity to all phones utilized by the licensee, resident manager, individuals, and caregivers.

(c) Telephone numbers for making complaints or a report of alleged abuse to the Division, the local CDDP, and Disability Rights Oregon must also be posted.

(d) Limitations on the use of the telephone by individuals are to be specified in the written house rules. Individual restrictions must be specified in the ISP. In all cases, a telephone must be accessible to individuals for outgoing calls (emergencies) 24 hours a day.

(e) AFH-DD telephone numbers must be listed in the local telephone directory.

(f) The licensee must notify the Division and the Division's designee, individuals, individuals' families, legal representatives, and service coordinators, as applicable, of any change in the adult foster home's telephone number within 24 hours of the change.

(7) SAFETY.

(a) Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The AFH-DD may be inspected for fire safety by the State Fire Marshall's office at the request of the Division using the standards in these rules as appropriate.

(b) Heating in accordance with manufacturer's specifications and electrical equipment, including wood stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment must be used and maintained properly and be in good repair. Providers who do not have a permit verifying proper installation of an existing wood stove must have the wood stove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow their recommended maintenance schedule. Protective glass screens or metal mesh curtains attached top and bottom are required on fireplaces. The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around wood stoves to prevent individuals with ambulation or confusion problems from coming in contact with the stove. Un-vented portable oil, gas, or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction.

(c) Extension cord wiring must not be used in place of permanent wiring.

(d) Hardware for all exit doors and interior doors used for exit purposes must have simple hardware that cannot be locked against exit and must have an obvious method of single action operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more individuals who have impaired judgment and are known to wander away from their place of residence must have a functional and activated alarm system to alert a caregiver of an unsupervised exit by an individual.

(e) EMERGENCY PROCEDURES.

(A) GENERAL FIRE DRILL REQUIREMENTS. The provider must conduct unannounced evacuation drills when individuals are present, once every quarter with at least one drill per year occurring during the hours of sleep. Drills must occur at different times of the day, evening, and night, with exit routes being varied based on the location of a simulated fire. All residents must participate in the evacuation drills.

(B) WRITTEN FIRE DRILL DOCUMENTATION REQUIRED. Written documentation must be made at the time of the fire drill and kept by the provider for at least two years following the drill. Fire drill documentation must include:

(i) The date and time of the drill or simulated drill;

(ii) The location of the simulated fire and exit route;

(iii) The last names of all individuals and providers present on the premises at the time of the drill;

(iv) The type of evacuation assistance provided by providers to individuals;

(v) The amount of time required by each individual to evacuate; and

(vi) The signature of the provider conducting the drill.

(C) The ISP must document that, within 24 hours of arrival, each new individual receives an orientation to basic safety and is shown how to respond to a fire alarm, and how to exit from the AFH-DD in an emergency.

(D) The provider must demonstrate the ability to evacuate all individuals from the AFH-DD within three minutes. If there are problems in demonstrating this evacuation time, the licensing authority may apply conditions to the license that include but are not limited to reduction of individuals under care, additional staffing, increased fire protection, or revocation of the license.

(E) The provider must provide, keep updated, and post a floor plan on each floor containing room sizes, location of each individual's bed, window, exit doors, resident manager or provider's sleeping room, smoke detectors, fire extinguishers, escape routes, and wheelchair ramps. A copy of the floor plan must be submitted with the application and updated to reflect any change.

(F) There must be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including basement.

(f) SMOKE DETECTORS. Battery operated smoke alarms with a 10-year battery life and hush feature must be installed in accordance with the manufacturer's listing, in each bedroom, adjacent hallways, common living areas, basements, and in two-story homes, at the top of each stairway. Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be between 6 inches and 12 inches from the ceiling and not within 12 inches of a corner. Alarms must be equipped with a device that warns of low battery condition when battery operated. All smoke alarms are to be maintained in functional condition.

(g) PORTABLE FIRE FIGHTING EQUIPMENT. At least one 2A-10BC rated fire extinguisher must be in a visible and readily accessible location on each floor, including basements, and must be inspected at least once a year by a qualified worker that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose and documentation maintained.

(h) SPECIAL HAZARDS

(A) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers, or safety containers, and secured to prevent tampering by individuals and vandals. To protect the safety of an individual in an AFH-DD, the provider must store hunting equipment and weapons in a safe and secure manner inaccessible to the individuals in the home.

(B) Smoking regulations must be adopted to allow smoking only in designated areas in compliance with Oregon's Smokefree Workplace Law. Smoking is prohibited in sleeping rooms. Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(C) Cleaning supplies, medical sharps containers, poisons, and insecticides must be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage, dining areas, and medications.

(8) EMERGENCY PLANNING.

(a) EFFECTIVE DATE. The emergency planning requirements listed in section (8) of this rule shall be effective January 1, 2011.

(b) If an individual accesses the community independently, the provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(c) WRITTEN EMERGENCY PLAN. Providers must develop, maintain, update, and implement a written Emergency Plan for the protection of all the individuals in the event of an emergency or disaster. The Emergency Plan must:

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(A) Be practiced at least annually. The Emergency Plan practice may consist of a walk-through of the duties or a discussion exercise dealing with the hypothetical event, commonly known as a tabletop exercise.

(B) Consider the needs of the individuals being served and address all natural and human-caused events identified as a significant risk for the home such as a pandemic or an earthquake.

(C) Include provisions and sufficient supplies, such as sanitation and food supplies, to shelter in place, when unable to relocate, for 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) Caregivers unable to report as scheduled.

(D) Include provisions for evacuation and relocation that identifies:

(i) The duties of caregivers during evacuation, transporting, and housing of individuals including instructions to caregivers to notify the Division or the Division's designee and local CDDP of the plan to evacuate or the evacuation of the 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 individuals in the home;

(iv) A method that provides persons unknown to the individual the ability to identify each individual by the individual's name, and to identify the name of the individual's supporting provider; and

(v) A method for tracking and reporting to the Division, or the Division's designee, and the local CDDP the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individuals including provisions to provide:

(i) Immediate and continued access to medical treatment with the evacuation of the individual summary sheet and the individual's emergency information identified in OAR 411-360-0170, and other information necessary to obtain care, treatment, food, and fluids for individuals;

(ii) Continued access to life sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(iii) Behavior support needs anticipated during an emergency; and

(iv) Adequate staffing to meet the life-sustaining and safety needs of the individuals.

(d) Providers must instruct and provide training to all caregivers about the caregivers' duties and responsibilities for implementing the Emergency Plan.

(A) Documentation of caregiver training must be kept on record by the provider.

(B) The provider must re-evaluate the Emergency Plan at least annually or when there is a significant change in the home.

(C) The Emergency Plan Summary, on the form supplied by the Division, must be sent to the Division annually and upon change of licensee or location of the AFH-DD.

(e) Applicable parts of the Emergency Plan must coordinate with each applicable Employment, Alternative to Employment, or Day Program provider to address the possibility of an emergency or disaster during day time hours.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 410.070, & 443.450

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

411-360-0140

Standards and Practices for Health Care

(1) INDIVIDUAL HEALTH CARE. The individual must receive care that promotes their health and well-being as follows:

(a) The AFH-DD must ensure each individual has a primary physician or primary health care provider whom the individual or the individual's parent, guardian, or legal representative has chosen from among qualified providers.

(b) The AFH-DD must ensure each individual receives a medical evaluation by a qualified health care provider no less than every two years or as recommended by the qualified 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 could lead to deterioration or harm.

(d) A physician's or qualified health care provider's written, signed order 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 AFH-DD provider must implement a physician's or qualified health care provider's order.

(f) Injections may be self-administered by the individual, or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or the provider, resident manager, or substitute caregiver who has been trained and is monitored by a physician or delegated by a registered nurse in accordance with the rules of the Board of Nursing in OAR chapter 851, division 047. Documentation regarding the training or delegation must be maintained in the individual's record.

(2) REQUIRED DOCUMENTATION. The AFH-DD provider must maintain and keep current, records on each individual to aid physicians, licensed health professionals, and the program in understanding the individual's medical history. 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;

(b) A record of visits and appointments to licensed health professionals that include documentation of the consultation, any treatment provided, and any follow-up reports provided to the AFH-DD provider;

(c) A record of known hospitalizations and surgeries;

(d) Current signed orders for all medications, treatments, therapies, specialized diets, and adaptive equipment;

(e) Medication administration records (MARs);

(f) Documentation of guardian consent for medical treatment that is not routine including surgery and anesthesia;

(g) Copies of previous mental health assessments, assessment updates, including multi-axial DSM diagnosis and treatment recommendations, and progress records from mental health treatment services; and

(h) Provide, when requested, copies of medical records and MARs to a child or young adult's legal guardian, Department caseworker, and CDDP services coordinator.

(3) MEDICATION PROCUREMENT AND STORAGE. All medications 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; 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 physician's or licensed health practitioner's order, 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 physician's order, 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 (taken as needed) medication was administered;

(H) Documented effectiveness of any PRN (taken 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 correction of 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. 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.

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(6) SELF-ADMINISTRATION MEDICATIONS UNAVAILABLE TO OTHER INDIVIDUALS. The AFH-DD must ensure that individuals able to self-administer medications keep them in a place unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.

(7) USE OF MEDICAL MARIJUANA.

(a) Prior to using medical marijuana in the AFH-DD, an individual must:

(A) Possess a valid OMMP registry card. A copy of the current registry card must be made available to the licensed provider and maintained in the individual's record.

(B) Provide a copy of the physician's written statement that indicates medical marijuana may mitigate the symptoms of the individual's qualifying condition and instructions for the use of medical marijuana.

(C) Be responsible for obtaining their marijuana from an OMMP approved third party grower who is not the AFH-DD licensee, caregiver, resident manager, or any other occupant in or on the premises of the AFH-DD.

(D) Sign an agreement that the individual understands that:

(i) Marijuana is not allowed to be grown by any person in or on the AFH-DD premises.

(ii) A participant in the OMMP may not possess more than one ounce of marijuana at any one time while in or on AFH-DD premises.

(iii) Medical marijuana may only be administered by ingesting it with food and by a vaporizer. If assistance with administration is necessary, the individual agrees to arrange for a "designated caregiver", authorized by the OMMP, and identified on the registry card. The individual understands that the AFH-DD licensee, caregivers, resident manager, and any occupant of the AFH-DD cannot be designated as their OMMP approved caregiver and identified on their OMMP registry card.

(iv) The AFH-DD licensee, caregivers, resident managers, and any occupant of the home cannot assist with the preparation, administration, or delivery of medical marijuana.

(v) The individual must maintain any equipment used to administer marijuana.

(vi) Marijuana must be kept in locked storage in the individual's bedroom when not being administered.

(vii) Immediately notify the OMMP of any change in status, such as a change in address, primary caregiver, or person responsible for the marijuana grow site. Copies of updated registry cards must be made available to the licensed AFH-DD provider for the individual's record.

(E) Comply with the Oregon Medical Marijuana Act, the requirements of the OMMP, and these rules. The individual must understand that failure to comply with Oregon laws, Oregon rules, or the house rules of the AFH-DD may result in additional action.

(b) The individual must self administer medical marijuana and ingest it or inhale it with a vaporizer. All smoking in or on the AFH-DD premises is prohibited. Marijuana must be administered in privacy 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 administering the marijuana.

(c) The individual must designate a grower to provide the marijuana as necessary, but that person must not be the AFH-DD provider, resident manager, caregivers, or any occupant in or on the AFH-DD premises. The grower designated by the individual must be authorized by OMMP and identified on the individual's registry card.

(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 can 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 grower's site.

(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 OMMP card holder's name. The container must be stored in a locked cabinet as is done with all controlled medications. Each administration must be tracked on the MAR as to dosage in grams as weighed on a scale, date, and time of day.

(d) The AFH-DD licensee, caregivers, resident managers, and any other occupant in or on the AFH-DD premises must not prepare or in any way assist with the administration or procurement of the individual's marijuana. The AFH-DD licensee must monitor the individual's usage of medical marijuana to ensure safety and to document its use is in compliance with the physician's instructions for using marijuana as documented in the individual's ISP.

(8) USE OF PSYCHOTROPIC MEDICATIONS.

(a) Psychotropic medications and medications for behavior must be:

(A) Prescribed by a physician or health care provider through a written order; and

(B) Monitored by the prescribing physician, health care professional, ISP team, and provider for desired responses and adverse consequences.

(b) The 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 the licensed medical professional,

(c) The 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 medical professional.

(d) PRN (as needed) psychotropic medication orders are not allowed.

(e) PSYCHOTROPIC MEDICATIONS FOR CHILDREN AND YOUNG ADULTS IN CHILD WELFARE CUSTODY VOLUNTARILY OR UNDER GUARDIANSHIP STATUS. Prior to any child or young adult being prescribed one or more psychotropic or any antipsychotic medication, a mental health assessment by a qualified mental health professional or a licensed medical professional is required.

(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 Department's caseworker when a child or young adult is in the legal custody of the Department;

(ii) The CDDP services coordinator; or

(iii) The parent if retaining guardianship, or the legal guardian,

(C) The required mental health assessment must:

(i) Have been completed within three months prior to the prescription;

or

(ii) May be an update of a prior mental health assessment, which focuses on a new or acute problem; and

(iii) Information from the mental health assessment must be provided to the licensed medical professional prior to the issuance of a prescription for psychotropic medication.

(D) Within one business day after receiving a new prescription or knowledge of a new prescription for psychotropic medication for the child or young adult, the provider must notify:

(i) The parent, when they retain legal guardianship; or

(ii) The legal guardian, either the Department, a family member, or other person who has legal guardianship; and

(iii) The CDDP services coordinator.

(E) The notification from the provider to the legal guardian and the CDDP services coordinator must contain:

(i) The name of the prescribing physician, or qualified 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.

(F) The provider must get a written informed consent prior to filling a prescription for any new psychotropic medication from one of the following except in case of urgent medical need:

(i) The parent who retains legal guardianship;

(ii) The family member or person who has legal guardianship; or

(iii) The Department when the Department is the legal guardian of the child or young adult.

(G) When a young adult or child has more than two prescriptions for psychotropic medications, an annual review of psychotropic medications must occur by a licensed medical professional, or a qualified mental health professional with the authority to prescribe drugs, such as the Oregon Medicaid Drug Use Review Program.

(9) BALANCING TEST FOR PSYCHOTROPIC MEDICATIONS.

When medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing health care

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provider using the Department's Balancing Test Form, or by inserting the required form content into the AFH-DD provider's forms.

(a) The AFH-DD provider 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; and

(b) The provider must keep signed copies of the balancing test in the individual's medical record for seven years.

(10) **ADVERSE MEDICATION EFFECTS SAFEGUARDS.** Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(a) Obtaining, whenever possible all prescription medication, except samples provided by the health care provider, for an individual from a single pharmacy that maintains a medication profile for the individual;

(b) Maintaining information about each medication's desired effects and side effects;

(c) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or caregiver; and

(d) Documentation in the individual's record of the reason why all medications should not be provided through a single pharmacy.

(11) **UNUSED, DISCONTINUED, OUTDATED, RECALLED, AND CONTAMINATED MEDICATIONS.** All unused, discontinued, outdated, recalled, and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of these substances. A written record of their disposal must be maintained that includes 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.

(12) **DIRECT NURSING SERVICES.** When direct nursing services are provided to an individual the provider must:

(a) Coordinate with the nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the individual's health needs; and

(b) Implement the Nursing Care Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(13) **DELEGATION AND SUPERVISION OF TASKS OF NURSING CARE.** Tasks of nursing care may be delegated by a registered nurse to providers and other caregivers only in accordance with Oregon State Board of Nursing OAR 851-047-0000.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0150

Personal Care Services:

Individuals living in the AFH-DD and receiving services from the Division must not receive personal care services funded through the state Title XIX Medicaid State Plan.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0160

Behavior Support

(1) **DEVELOPMENT OF AN INDIVIDUALIZED PLAN TO ALTER AN INDIVIDUAL'S BEHAVIOR.** A decision to develop a plan to alter an individual's behavior must be made by the ISP team. Documentation of the ISP team decision must be maintained by the AFH-DD provider.

(2) **FUNCTIONAL BEHAVIORAL ASSESSMENT REQUIRED.** Prior to the development of a formal Behavior Support Plan, as agreed to by the ISP team, a functional behavioral assessment must be conducted, which must be based upon information provided by one or more persons who know the individual. The functional behavioral assessment must include:

(a) A clear, measurable description of the behavior which 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, which includes the possibility that the behavior is one or more of the following:

(A) An effort to communicate;

(B) The result of medical conditions;

(C) The result of psychiatric conditions; and

(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.

(3) **BEHAVIOR SUPPORT PLAN REQUIREMENTS.** The Behavior Support Plan must include:

(a) An individualized summary of the person's needs, preferences, and relationships;

(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 challenging 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 plan, which includes a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;

(i) Specific instructions for caregivers who provide support to follow regarding the implementation of the plan; and

(j) Positive behavior supports that includes the least intrusive intervention possible.

(4) **ADDITIONAL DOCUMENTATION REQUIREMENTS FOR IMPLEMENTATION OF BEHAVIORAL SUPPORT PLANS.** Providers must maintain written evidence that the individual, the individual's parent (if applicable), guardian or legal representative (if applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns have been documented;

(5) **PROTECTIVE PHYSICAL INTERVENTION.**

(a) **CIRCUMSTANCES ALLOWING THE USE OF PHYSICAL INTERVENTION.** The AFH-DD must only employ protective physical intervention techniques that are included in the current 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 the individual or others is at risk, and the ISP team has authorized the procedures as documented by an ISP team decision, 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

(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 individual's protection during the time that a medical condition exists.

(6) **TRAINING.** Providers, resident managers, and substitute caregivers who support individuals who have behavior support needs that may require the application of protective physical intervention, and when the ISP team has determined that there is probable cause for future application of protective physical intervention, must be trained by an instructor certified in OIS. Documentation verifying such training must be maintained in the personnel file of the provider, resident manager, and substitute caregiver.

(7) **MODIFICATION OF OIS PROTECTIVE PHYSICAL INTERVENTION PROCEDURES.** The AFH-DD 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.

(8) **PROTECTIVE PHYSICAL INTERVENTION TECHNIQUES IN EMERGENCY SITUATIONS.** Use of protective physical intervention techniques that are not part of an approved plan of behavior support in emergency situations must:

(a) Be reviewed by the AFH-DD provider or resident manager or designee within one hour of application;

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(b) Be used only until the individual is no longer an immediate threat to self or others;

(c) Require submission of an incident report to the CDDP services coordinator, or other Division designee (if applicable), and personal agent (if applicable) no later than one working day after the incident has occurred; and

(d) Require an ISP team meeting if an emergency protective physical intervention is used more than three times in a six-month period.

(9) INCIDENT REPORT. Any use of protective physical intervention must be documented in an incident report. 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 the protective physical intervention;

(d) Documentation of any injury;

(e) The name and position of the caregiver applying the protective physical intervention;

(f) The name and position of the caregivers witnessing the protective physical intervention; and

(g) The name and position of the person conducting the review of the incident that includes the follow-up to be taken to prevent a recurrence of the incident.

(10) COPIES SUBMITTED. A copy of the incident report must be forwarded within five working days of the incident, to the CDDP services coordinator or other Division designee (if applicable) unless the protective physical intervention results in an injury, in which case, the CDDP, or other Division designee (if applicable) must be notified within one working day of the incident... Copies of incident reports not associated with protective service investigations must be provided to the personal agent (if applicable) and the individual's legal guardian (if applicable) within the timeframes specified above.

Stat. Auth.: ORS 410.070 & 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. of 2-1-05; SPD 13-2010, f. 6-30-10, cert. of. 7-1-10

411-360-0170

Documentation and Record Requirements

(1) INDIVIDUAL RECORDS. A record must be developed, kept current, and available on the premises for each individual admitted to the AFH-DD.

(a) The provider must maintain a summary sheet for each individual in the home. The record must include:

(A) The individual's name, current and previous address, date of entry into 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 individual's legal representative, family, advocate, or other significant person;

(ii) The individual's preferred primary health care provider and designated back up health care provider or clinic;

(iii) The individual's preferred dentist;

(iv) The individual's day program or employer; if any;

(v) The individual's services coordinator; and

(vi) Other agency representatives providing services to the individual.

(b) EMERGENCY INFORMATION. The AFH-DD provider must maintain emergency information for each individual receiving services in the AFH-DD in addition to an individual summary sheet identified in section (1)(a) of this rule. The emergency information must be kept current and must include:

(A) The individual's name;

(B) The provider's name, address, and telephone number;

(C) The address and telephone number of the AFH-DD where the individual resides if different from that of the licensee;

(D) The individual's physical description, which could include a picture and the date it was taken, and identification of:

(i) The individual's race, gender, height, weight range, hair, and eye color; and

(ii) Any other identifying characteristics that may assist in identifying the individual should the need arise, such as marks or scars, tattoos, or body piercings.

(E) Information on the individual's abilities and characteristics 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 could assist a person not familiar with the individual to understand what the individual can do for him or herself.

(F) The individual's health support needs including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person would need 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 individual's ability to communicate, respond to instructions, or follow directions; and

(viii) Specialized equipment needed for mobility, positioning, or other health related needs.

(G) The individual's emotional and behavioral support needs 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 individual's supervision requirements and why; and

(J) Any additional pertinent information the provider has that may assist in the care and support of the individual should a natural or man-made disaster occur.

(c) Individual records must be available to representatives of the Division, or the Division's designee, conducting inspections or investigations, as well as to individuals to whom the information pertains, their authorized representative, or other legally authorized persons;

(d) INDIVIDUAL RECORDS. Individual records must be kept by the provider, for a period of at least three years. When an individual moves or the AFH-DD closes, copies of pertinent information must be transferred to the individual's new place of residence; and

(e) In all other matters pertaining to confidential records and release of information, providers must comply with ORS 179.505.

(2) INDIVIDUAL ACCOUNT RECORDS. For those individuals not yet capable of managing their own money, as determined by the ISP Team or guardian, the provider must prepare, maintain, and keep current a separate and accurate written record for each individual of all money received or disbursed on behalf of or by the individual.

(a) The record must include:

(A) The date, amount, and source of income received;

(B) The date, amount, and purpose of funds disbursed; and

(C) Signature of the provider 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) for individuals are to be used at the discretion of the individual for such things as clothing, tobacco, and snacks (not part of daily diet) and addressed in the ISP.

(d) Each 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) INDIVIDUALS' PERSONAL PROPERTY RECORD. The provider must prepare and maintain an accurate individual written record of personal property that has significant or monetary value to each individual as determined by a documented ISP team or guardian decision. The record must include:

(a) The description and identifying number, if any;

(b) Date of inclusion in the record;

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- (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 record for accuracy.

(4) **INDIVIDUAL SUPPORT PLAN.** A health and safety transition plan must be developed at the time of admission for the first 60 days of service. A complete ISP must be developed by the end of 60 days. It must be updated at a minimum annually, and more often when the individual's support needs change.

(a) A completed ISP must be documented on the Division-mandated Foster Care ISP Form that includes the following:

(A) What is most important to the individual and what works and doesn't work;

(B) The individual's support needs (as identified on the Support Needs Assessment Profile (SNAP) (if applicable));

(C) The type and frequency of supports to be provided;

(D) The person responsible for carrying out the supports; and

(E) A copy of the Employment, Alternatives to Employment, or Day Program provider's plan must be integrated or attached to the AFH-DD ISP for persons also served in an employment or other Department-funded day service.

(b) The ISP must include at least six hours of activities each week that are of interest to the individual, not including television or movies made available by the provider. Activities available in the community and made available or offered by the provider or the CDDP may include but are not limited to:

(A) Habilitation services;

(B) Rehabilitation services;

(C) Educational services;

(D) Vocational services;

(E) Recreational and leisure activities; and

(F) Other services required to meet an individual's needs as defined in the ISP.

(5) **HOUSE RULES.** The provider must document that a copy of the written house rules has been provided and discussed with the individual annually. House rules must be in compliance with sections (9)(a-s) of this rule governing the rights of individuals. House rules established by the provider must:

(a) Include any restrictions the AFH-DD may have on the use of alcohol, tobacco in compliance with Oregon's Smokefree Workplace Law, medical marijuana (if applicable), pets, visiting hours, dietary restrictions, or religious preference.

(b) Include house rules specific to the presence and use of medical marijuana on the AFH-DD premises, if applicable. The home's medical marijuana rules must be reviewed and approved by the Division or the Division's designee.

(c) Not be in conflict with the individual's Bill of Rights, the family atmosphere of the home, or any of these rules.

(d) Include house rules specific to the immediate notification of substantiated abuse as described in OAR 411-360-0210(16)(a-d).

(e) Be reviewed and approved by the Division or the Division's designee prior to the issuance of a license and prior to implementing changes.

(f) Be readily available to be seen and read by 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 and 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, at minimum monthly progress notes for each individual residing in the home, regarding the progress of the ISP supports, any medical, behavioral, or safety issues or any other events that are significant to the individual.

(9) **INDIVIDUAL'S BILL OF RIGHTS.** The provider must abide by the Individual's Bill of Rights and post them in a location that is accessible to individuals and individuals' parents, guardians, or legal representatives. The provider must give a copy of the Individual's Bill of Rights along with a description of how to exercise these rights to each individual and the individual's parent, guardian, or legal representative. The Individual's Bill of Rights must be reviewed annually or as changes occur by the provider with the individual and any parent, guardian, or legal representative. The Individual's Bill of Rights states each individual has the right to:

- (a) Be treated as an adult with respect and dignity;
- (b) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote;
- (c) Receive appropriate care and services, prompt health care as needed;

(d) 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, send and receive personal mail unopened, and engage in telephone conversations as explained in OAR 411-360-0130(6)(a-f);

(e) Have access to and participate in activities of social, religious, and community groups;

(f) Be able to keep and use personal clothing and possessions as space permits;

(g) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion;

(h) Manage his or her financial affairs unless determined unable by the ISP team or legally restricted;

(i) Have a safe and secure environment;

(j) Have a written agreement regarding services to be provided;

(k) Voice grievance without fear of retaliation;

(l) Have freedom from training, treatment, chemical or protective physical interventions except as agreed to, in writing, in a individual's ISP;

(m) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to individuals in an age appropriate manner;

(n) Have an opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;

(o) Be free from punishment. Behavior intervention programs must be approved in writing on the individual's ISP;

(p) Be free from abuse and neglect;

(q) Have the opportunity to contribute to the maintenance and normal activities of the household;

(r) Have access and opportunity to interact with persons with or without disabilities; and

(s) Have the right not to 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)(b) and OAR 411-088-0080.

(10) AFH-DD records must be kept current and maintained by the AFH-DD provider and be available for inspection upon request. AFH-DD records must include but not be limited to 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 available for review upon request:

(a) Completed employment applications, including the names, addresses, and telephone numbers of all caregivers employed by the provider. All employment applications for persons hired to provide care in an AFH-DD must ask if the applicant has ever been found to have committed abuse.

(b) Proof that the provider has the Department's approval for each subject individual, who is 16 years of age and older, to have contact with adults who are elderly or physically disabled or developmentally disabled as a result of a criminal records check.

(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 Division's Basic Training Course for the provider, resident manager, and all caregivers.

(e) Proof of mandatory abuse report training for all caregivers.

(f) Proof of any additional training required for resident managers and caregivers.

(g) Documentation of caregiver orientation to the AFH-DD, training of emergency procedures, training on individual's ISP's, and training on behavior supports and Nursing Care Plan (if applicable).

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0180

General Practices

The provider must:

- (1) Conspicuously post the state license where it can be seen by individuals;

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(2) Explain and document in the individual's file that a copy of the Individual's Bill of Rights is given to each individual at admission, and is posted in a conspicuous place including the name and phone number of the office to call in order to report complaints;

(3) Develop written house rules regarding hours, visitors, use of tobacco, 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. House rules must be discussed with individuals and their families at the time of admission, reviewed annually, and be posted in a conspicuous place in the AFH-DD. House rules are subject to review and approval by the Division or the Division's designee and may not violate individual's rights as stated in ORS 430.210, 443.739, and OAR 411-360-0170(9)(a-s). If the individual intends to use medical marijuana in the AFH-DD, the individual's record must include the home's medical marijuana house rules signed and dated by the individual or the individual's legal representative;

(4) Cooperate with Department personnel or the Department's designee in complaint investigation procedures, abuse investigations and protective services, planning for individual care, application procedures, and other necessary activities, and allow access of Department personnel, or the Department's designee, to the AFH-DD, its individuals, and all records;

(5) Give care and services, as appropriate to the age and condition of the individuals, and as identified in the ISP. The provider must be responsible for ensuring that physicians' orders and those of other medical or health professionals are followed, and that the individual's physicians and other health professionals are informed of changes in health status and if the individual refuses care;

(6) In the provider's absence, have a substitute caregiver on the premises who can provide care or services as required by the age and condition of the individuals. An AFH-DD service recipient may not be a substitute caregiver. For provider absences beyond 72 hours, the CDDP must be notified of the name of the caregiver;

(7) A provider, resident manager, or caregiver must be present in the home at all times individuals are present, unless specifically stated in the ISP, and granted as a variance by the Division;

(8) Allow individuals to exercise all civil and human rights accorded to other citizens;

(9) Not allow or tolerate physical, sexual, or emotional abuse or punishment, exploitation, or neglect of individuals;

(10) Provide care and services as agreed to in the ISP;

(11) Keep information related to individuals confidential as required under ORS 179.050;

(12) Assure that the number of individuals requiring nursing care does not exceed the provider's capability as determined by the CDDP and Division;

(13) Not admit individuals without developmental disabilities prior to the express permission of the Division or the Division's designee. The provider must notify the CDDP prior to admitting an individual not referred for placement by the CDDP;

(14) Notify the Division and CDDP prior to announcing a planned closure to individuals and families. The provider must give individuals, families, and the CDDP staff 30 days written notice of the planned change except in circumstances where undue delay might jeopardize the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH-DD, individuals may not be shifted from one AFH-DD to another without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and the CDDP;

(15) Exercise reasonable precautions against any conditions that may threaten the health, safety, or welfare of individuals;

(16) Immediately notify the appropriate ISP team members (in particular the services coordinator and family or guardian) of any unusual incidents that include the following:

- (a) Any significant change in medical status;
- (b) An unexplained or unanticipated absence from the AFH-DD;
- (c) Any alleged or actual abuse of the individual;
- (d) Any major behavioral incident, accident, illness, or hospitalization;

- (e) If the individual contacts or is contacted by the police; or
- (f) The individual dies.

(17) Write an incident report for any unusual incident and forward copy of the incident report to the CDDP within five working days of the incident unless the incident must be referred immediately for a protective services investigation. Copies of incident reports not involving a protective

services investigation must be provided to the guardian or personal agent, when applicable; and

(18) Notify the Division and the Division's designee within 24 hours upon a change in the business address for electronic mail and the telephone number for the provider and the AFH-DD.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0190

Standards for Admission, Transfers, Respite, Crisis Placements, Exit, and Closures

(1) **ADMISSION.** All individuals considered for admission into the AFH-DD must:

(a) 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; and

(b) Be determined to have a developmental disability by the Division or the Division's designee; and

(c) Be referred by the CDDP or have prior written approval of the CDDP or Division if the individual's services are paid for by the Division; or

(d) Be placed with the agreement of the CDDP if the individual is either private pay or not developmentally disabled.

(2) **INFORMATION REQUIRED FOR ADMISSION.** At the time of the referral, the provider must be given:

(a) A copy of the individual's eligibility determination document;

(b) A statement indicating the individual's safety skills including ability to evacuate from a building when warned by a signal device, and adjusting water temperature for bathing and washing;

(c) A brief written history of any behavioral challenges including supervision and support needs;

(d) A medical history and information on health care supports that includes where available:

(A) The results of a physical exam made within 90 days prior to entry;

(B) The results of any dental evaluation;

(C) A record of immunizations;

(D) A record of known communicable diseases and allergies; and

(E) A record of major illnesses and hospitalizations.

(e) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(f) Copies of documents relating to guardianship or conservatorship or any other legal restrictions on the rights of the individual, if applicable; and

(g) A copy of the most recent Functional Behavioral Assessment, Behavior Support Plan, ISP, and Individual Education Plan if applicable.

(3) **ADMISSION MEETING.** An ISP team meeting must be conducted prior to the onset of services to the individual. The findings of the 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 and the date determined to be the date of entry;

(c) The names and role of the participants at the meeting;

(d) Documentation of the pre-admission information required by section (2)(a-g) of this rule;

(e) Documentation of the decision to serve or not serve the individual requesting service, with reasons; and

(f) A written Transition Plan to include all medical, behavior, and safety supports needed by the individual, to be provided to the individual for no longer than 60 days, if the decision was made to serve.

(4) The provider must retain the right to deny admission of any individual if they feel the individual's support needs may not be met by the AFH-DD provider, or for any other reason specifically prohibited by these rules.

(5) AFH-DD homes 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 CDDP or the Division.

(6) **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 individual's legal representative, guardian, or conservator, and the CDDP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the individual's right to a hearing as provided in ORS 443.738(11)(b) and OAR 411-088-0080, except for a medical emergency, or to protect the welfare of the individual

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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;

(C) The AFH-DD has had its license suspended, revoked, not renewed, or the provider voluntarily surrendered their license;

(D) The individual's care needs exceed the ability of the provider; or

(E) There is a mutual decision made by the individual and the ISP team that a transfer is in the individual's best interest and all team members agree.

(b) Individuals who object to the transfer by the AFH-DD provider must be given the opportunity for hearing as provided in ORS 443.738(1)(b) and OAR 411-088-0080. Participants may include the individual, and at the individual's request, 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.

(7) RESPITE. Providers may not exceed the licensed capacity of their AFH-DD. However, respite care of no longer than 14 days duration may be provided to one or more individuals if the addition of the respite individual does not cause the total number of individuals to exceed five. Thus, a provider may exceed the licensed number of individuals by one or more respite individuals, for 14 days or less, if approved by the CDDP or the Division, and:

(a) If the total number of individuals does not exceed five;

(b) There is adequate bedroom and living space available in the AFH-DD; and

(c) The provider has information sufficient to provide for the health and safety of individuals receiving respite.

(8) CRISIS SERVICES. All individuals considered for crisis services received in an AFH-DD must:

(a) Be referred by the CDDP or Division;

(b) Be determined to have a developmental disability by the Division or the Division's designee;

(c) Be determined to be eligible for developmental disability services as defined in OAR 411-360-0020 or any subsequent revision thereof;

(d) 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; and

(e) Have a written Crisis Plan developed by the CDDP or Regional Crisis Diversion Program that serves as the justification for, and the authorization of, supports and expenditures pertaining to an individual receiving crisis services provided under this rule.

(9) SUPPORT SERVICES PLAN OF CARE AND CRISIS ADDENDUM REQUIRED. Individuals receiving support services under OAR chapter 411, division 340, and receiving crisis services in an AFH-DD must have a Support Services Plan of Care and a Crisis Addendum upon admission to the AFH-DD.

(10) PLAN OF CARE. Individuals, not enrolled in support services, receiving crisis services for less than 90 consecutive days must have a Transition Plan on admission that addresses any critical information relevant to the individual's health and safety including current physicians' orders.

(11) ADMISSION MEETING REQUIRED. Admission meetings are required for individuals receiving crisis services.

(12) EXIT MEETING REQUIRED. Exit meetings are required for individuals receiving crisis services.

(13) WAIVER OF APPEAL RIGHTS FOR EXIT. Individuals receiving crisis services do not have appeal rights regarding exit upon completion of the Crisis Plan.

(14) EXIT.

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers stated in sections (6)(a)(A-E) of this rule. The provider must give at least 30 days written notice to an individual, the CDDP services coordinator, and the Department or the Department's designee before termination of residency, except where undue delay might jeopardize the health, safety, or well-being of the individual or others. If an individual requests a hearing to appeal the exit from an AFH-DD, the individual must receive the same services until the grievance is resolved.

(b) 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 they choose to exit the AFH-DD.

(15) EXIT MEETING. Each individual considered for exit must have a meeting by the ISP team 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 meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of strategies to prevent an exit from the AFH-DD unless the individual, or individual's guardian is requesting exit;

(f) Documentation of the decision regarding exit including verification of a majority agreement of the meeting participants regarding the decision; and

(g) Documentation of the proposed plan for services to the individual after the exit.

(16) REQUIREMENTS FOR 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 and the individual's guardian or legal representative request an immediate move from the AFH-DD home; or

(b) The individual is removed by a legal authority acting pursuant to civil or criminal proceedings.

(17) CLOSING. Providers must notify the Division in writing prior to a voluntary closure of an AFH-DD, and give individuals, families, and the CDDP, 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety, or well-being of individuals, providers, or caregivers. If a provider has more than one AFH-DD, individuals may not be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from individuals, family members, and the CDDP. A provider must return the AFH-DD license to the Department if the home closes prior to the expiration of the license.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0200

Adjustment, Suspension or Termination of Payment

(1) The CDDP or Division may adjust, suspend, or terminate payment to a provider when any of the following conditions occur:

(a) The provider's AFH-DD license is revoked, suspended, or terminated;

(b) Upon finding that the provider is failing to deliver any service as agreed to in the ISP;

(c) When funding, laws, regulations, or the CDDP or Division priorities change such that funding is no longer available, redirected to other purposes, or reduced;

(d) The individual's service needs change;

(e) The individual is absent without providing notice to the provider for five or more consecutive days;

(f) The individual is determined to be ineligible for services; or

(g) The individual moves, with or without notice, from the AFH-DD. The provider shall be paid only through the last night the individual slept in the AFH-DD.

(2) The CDDP or the Division is under no obligation to maintain the AFH-DD at its licensed capacity or to provide payments to potential providers.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0210

Inspections

(1) The Division or the Division's designee shall conduct an inspection of an AFH-DD:

(a) Prior to issuance of a license;

(b) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of individuals; or

(c) Anytime the Division or the Division's designee has probable cause to believe that an AFH-DD has violated a regulation or provision of these rules or is operating without a license.

(2) The Division or the Division's designee may conduct inspections of an AFH-DD:

(a) Anytime such inspections are authorized by these rules and any other time the CDDP or the Division considers it necessary to determine if

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an AFH-DD is in compliance with these rules or with conditions placed upon the license;

- (b) To determine if cited deficiencies have been corrected; and
- (c) For the purpose of monitoring of the individuals' care.

(3) State or local fire inspectors shall be permitted access to enter and inspect the AFH-DD regarding fire safety upon request of the Division.

(4) Division or CDDP staff shall have full access and authority to examine, among other things, facility and individual records and accounts, and the physical premises, including the buildings, grounds, equipment, and any vehicles.

(5) Division or CDDP staff shall have authority to interview the provider, resident manager, caregivers, and individuals. Interviews shall be confidential and conducted in private, and shall be confidential except as considered public record under ORS 430.763.

(6) Providers must authorize resident managers and substitute caregivers to permit entrance by Division or CDDP staff for the purpose of inspection and investigation.

(7) The Division or CDDP staff has authority to conduct inspections with or without advance notice to the provider, substitute caregivers, or an individual of the AFH-DD. The Division or CDDP may not give advance notice of any inspection if they believe that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) The inspector shall respect the private possessions and living area of individuals, providers, and caregivers while conducting an inspection.

(9) A copy of the inspection report shall be given to the licensee within 10 working days of completion of the final report.

(10) Completed reports on inspections, except for confidential information, shall be available to the public, upon request of the Division or CDDP, during business hours.

(11) For individuals receiving services authorized or funded by a CDDP, the Department or the Department's designee must investigate allegations of abuse as defined in OAR 407-045-0260.

(12) When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department or the Department's designee, has determined to initiate an investigation, the provider may not conduct an internal investigation without prior authorization from the Department or the Department's designee. For the purposes of this section, an internal investigation is defined as:

(a) Conducting interviews of the alleged victim, witness, the accused person or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances;

(b) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(c) Any other actions beyond the initial actions of determining:

(A) If there is reasonable cause to believe that abuse has occurred;

(B) If the alleged victim is in danger or in need of immediate protective services;

(C) If there is reason to believe that a crime has been committed; and

(D) What, if any, immediate personnel actions shall be taken.

(13) When an abuse investigation has been initiated, the Department or the Department's designee must provide notice to the AFH-DD provider according to OAR 407-045-0290.

(14) The Department or the Department's designee shall conduct investigations as described in OAR 407-045-0250 to 407-045-0360.

(15) When an abuse investigation has been completed, the Department or the Department's designee must provide notice of the outcome of the Abuse Investigation and Protective Services Report according to OAR 407-045-0320.

(16) When the provider receives notification of a substantiated allegation of abuse, the provider must provide immediate written notification:

(a) To the person found to have committed abuse;

(b) Individuals of the foster home;

(c) Individuals' services coordinators; and

(d) Individuals' guardians.

(17) The provider's written notification must include:

(a) The type of abuse as defined in OAR 407-045-0260;

(b) When the allegation was substantiated; and

(c) How to request a copy of the Abuse Investigation and Protective Services Report.

(18) When the provider has been notified of the completion of the abuse investigation, a provider may conduct an investigation to determine if any other personnel actions are necessary.

(19) Upon completion of the Abuse Investigation and Protective Services Report, according to OAR 407-045-0330 the sections of the report

that are public records and not exempt from disclosure under the public records law must be provided to the appropriate provider. The provider must implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(20) A provider may not retaliate against any person who reports in good faith suspected abuse, or against the individual with respect to the report. An accused person may not self-report solely for the purpose of claiming retaliation.

(21) Any provider who retaliates against any person because of a report of suspected abuse or neglect shall be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, shall be subject to a penalty up to \$1,000, notwithstanding any other remedy provided by law.

(22) Any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this section, "adverse action" means any action taken by a community facility, community program, or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to:

(a) Discharge or transfer from the AFH-DD, except for clinical reasons;

(b) Discharge from or termination of employment;

(c) Demotion or reduction in remuneration for services; or

(d) Restriction or prohibition of access to the AFH-DD or the individuals served by the AFH-DD.

(23) Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0220

Complaints

(1) The Division or CDDP shall furnish each AFH-DD with a Complaint Notice that must be posted in a conspicuous place, stating the telephone number of the Division and the CDDP and the procedure for making complaints.

(2) Any person who believes these rules have been violated may file a complaint with the Division or CDDP.

(3) The Division or CDDP shall investigate any complaint regarding the AFH-DD.

(4) A copy of all AFH-DD complaints shall be maintained by the Division. All complaints and action taken on the complaint, indexed by the name of the provider, must:

(a) Be placed into the public file at the Division. (Information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed);

(b) Protect the privacy of the complainant and the individual; and

(c) Treat the names of the witnesses as confidential information.

(5) Providers who receive substantiated complaints pertaining to the health, safety, or welfare of individuals may have their licenses suspended, revoked, or not renewed, or may have conditions placed on the license.

(6) The AFH-DD provider, resident manager, or caregiver must not retaliate in any way against any individual after a complaint has been filed with the Division. Retaliation may include but is not limited to:

(a) Increasing charges;

(b) Decreasing services, rights, or privileges;

(c) Threatening to increase charges or decrease services, rights, or privileges;

(d) Taking or threatening to take any action to coerce or compel the individual to leave the AFH-DD; or

(e) Abusing, harassing, or threatening to harass or abuse an individual in any manner.

(7) A complainant, witness, or caregiver of an AFH-DD must not be subject to retaliation by a provider or resident manager for making a report or being interviewed about a complaint or being a witness. Retaliation may include but is not limited to caregiver dismissal or harassment, or restriction of access to either the AFH-DD or an individual.

(8) Any person has the right to inspect and receive a photocopy of the public complaint files, including protective services files, maintained by the Division upon request subject to the Division's procedures, ORS 192.410 through 192.505, and photocopy charges for public record requests subject to federal and state confidentiality laws.

Stat. Auth.: ORS 410.070 & 409.050

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

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411-360-0230

Procedures for Correction of Violations

(1) If an inspection or investigation results in a violation of the rules other than abuse, the Division, or the Division's designee shall notify the provider in writing of violations of these rules.

(2) The notice of violation shall state the following:

(a) A description of each conduct or condition that constitutes a violation;

(b) Each regulation that has been violated; and

(c) Except in cases of abuse, a specific time frame for correction, but no later than 60 days after receipt of the notice.

(3) The provider must notify the Division in writing of the correction of violations no later than the date specified in the notice of violation.

(4) The Division or the Division's designee shall conduct a re-inspection of the AFH-DD after the date the Division or the CDDP receives the report of compliance or after the date by which violations must be corrected as specified in the notice of violation.

(5) If, after inspection of the AFH-DD, the violations have not been corrected by the date specified in the notice of violation or if the Division has not received a report of compliance, the Division may institute one or more of the following actions:

(a) Imposition of an administrative sanction; or

(b) Filing of a criminal complaint.

(6) For violations that present a serious threat to the health, safety, or welfare of individuals, the notice of violation shall order the licensee to correct the violations and abate the conditions no later than 24 hours after receipt of the notice of violation. The Division or the Division's designee shall inspect the AFH-DD after the 24 hour period to determine if the violations have been corrected as specified in the notice of violation.

(7) If individuals are in serious and immediate danger, the license may be suspended immediately and arrangements made to move the individuals.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0240

Administrative Sanction

(1) An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

(a) Attachment of conditions to a license;

(b) Civil penalties;

(c) Denial, revocation, or non-renewal of license; or

(d) Immediate suspension of license.

(2) If the Division imposes an administrative sanction, it shall serve a notice of administrative sanction upon the licensee personally, by certified or registered mail, or certified email.

(3) The notice of administrative sanction shall state:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of each condition or act that constitutes a violation;

(c) A statement of the administrative sanction imposed;

(d) A statement of the licensee's right to a contested case hearing;

(e) A statement of the authority and jurisdiction under which the hearing is to be held;

(f) A statement that the Division's files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(4) The Division's notice serves as the final order by default if the licensee fails to request a hearing within the specified time or fails to appear for the contested case hearing.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0250

Conditions

(1) CIRCUMSTANCES UNDER WHICH CONDITIONS MAY BE APPLIED TO A LICENSE. Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of individuals;

(b) There exists a threat to the health, safety, and welfare of an individual;

(c) There is reliable evidence of abuse of an adult; or

(d) The AFH-DD is not being operated in compliance with these rules.

(2) IMPOSING CONDITIONS. Conditions that may be imposed on a licensee include but are not limited to:

(a) Restricting the total number of individuals in the AFH-DD;

(b) Restricting the number and impairment level of individuals allowed, based upon the capacity of the caregivers, to meet the health and safety needs of all individuals;

(c) Requiring additional caregiver or caregiver qualifications;

(d) Requiring additional training of caregivers;

(e) Requiring additional documentation;

(f) Restricting a provider from opening an additional AFH-DD; and

(g) Suspending admissions.

(3) WRITTEN NOTIFICATION. The provider shall be notified in writing of any conditions imposed, the reason for the conditions, and shall be given an opportunity to request a hearing under ORS chapter 183.

(4) TIMELINE TO MAKE WRITTEN APPLICATION FOR CONTESTED CASE HEARING. The provider to whom the notice is addressed, shall have 10 days from the date of service of the notice in which to make a written application for a contested case hearing before the Division.

(5) ADMINISTRATIVE REVIEW. In addition to, or in lieu of a contested case hearing, a provider may request a review by the Assistant Director of the Division of conditions imposed by the CDDP or the Division. The review does not diminish the provider's right to a hearing.

(6) LENGTH OF CONDITIONS. Conditions may be imposed for the duration of the licensure period (one year) or limited to some other shorter period of time. If the conditions correspond to the licensing period, the reasons for the conditions shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions shall be indicated on the attachment to the license.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0260

Civil Penalties

(1) Civil penalties, except as otherwise provided in this rule, shall not exceed \$100 per violation to a maximum of \$250 assessed, for a general violation of these rules.

(2) A civil penalty of up to \$500, unless otherwise required by law, shall be imposed for falsifying individual or AFH-DD records or causing another to do so.

(3) A civil penalty of \$250 shall be imposed on a licensee for failure to have either the provider, resident manager, or other caregiver on duty 24 hours per day in the AFH-DD, per ORS 443.725(3), unless permitted under OAR 411-360-0180(7).

(4) A civil penalty of \$250 shall be imposed for dismantling or removing the battery from any required smoke alarm, or failing to install any required smoke alarm.

(5) A civil penalty of not less than \$250 nor more than \$500, unless otherwise required by law, shall be imposed on a provider who admits an individual knowing that the individual's care needs exceed the license classification of the AFH-DD if the admission places the individual or other individuals at grave risk of harm.

(6) Civil penalties of up to \$1,000 per occurrence may be assessed for substantiated abuse.

(7) If the Division or the Division's designee conducts an investigation or survey and abuse is substantiated and if the abuse resulted in the death, serious injury, rape, or sexual abuse of a resident, the Division shall impose a civil penalty of not less than \$2,500 for each violation.

(a) To impose this civil penalty, the Division shall establish that:

(A) The abuse arose from deliberate or other than accidental action or inaction;

(B) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident; and

(C) The person with the finding of abuse had a duty of care toward the resident.

(b) For the purposes of this civil penalty, the following definitions apply:

(A) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(B) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

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(C) "Sexual abuse" means any form of nonconsensual sexual contact including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(D) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(8) In addition to any other liability or penalty, the Division may impose a civil penalty for any of the following:

(a) Operating the AFH-DD without a license;

(b) The number of individuals exceeds the licensed capacity;

(c) The provider fails to achieve satisfactory compliance with the requirements of these rules within the time specified, or fails to maintain such compliance;

(d) The AFH-DD is unable to provide adequate level of care to individuals;

(e) There is retaliation or discrimination against an individual, family, employee, or any other person for making a complaint against the AFH-DD;

(f) The provider fails to cooperate with the Division, physician, registered nurse, or other health care professional in carrying out an individual's care plan; or

(g) Violations are found on two consecutive inspections of an AFH-DD after a reasonable amount of time, prescribed for elimination of the violations, has passed.

(9) In imposing a civil penalty pursuant to this rule, the Division shall consider the following factors:

(a) The past history of the 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 AFH-DD homes;

(c) The economic and financial conditions of the provider incurring the penalty; and

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, and well being of the individuals.

(10) Any civil penalty imposed under this rule shall become due and payable when the provider incurring the penalty receives a notice in writing from the Division. The notice shall be sent by registered or certified mail and shall include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved;

(b) A short and plain statement of the matter asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right to request a hearing.

(11) The provider, to whom the notice is addressed, shall have 10 days from the date of service of the notice in which to make a written application for a contested case hearing before the Division.

(12) All hearings shall be conducted pursuant to the applicable provisions of ORS chapter 183.

(13) If the provider notified fails to request a contested case hearing within 10 days, a final order may be entered by the Division assessing a civil penalty.

(14) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Assistant Director of the Division considers proper and consistent with individual health and safety.

(15) If the final order is not appealed, the amount of the penalty is payable within 10 days after the final order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, shall constitute a judgment and may be filed in accordance with provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(16) A violation of any general order or final order pertaining to a AFH-DD issued by the Division is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.

(17) Judicial review of civil penalties imposed under ORS 441.710 shall be provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(18) All penalties recovered under ORS 443.455 and 441.710 to 441.740 shall be paid into the Quality Care Fund.

Stat. Auth.: ORS 410.070 & 409.050

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

411-360-0270

Denial, Revocation or Non-renewal of License

(1) The Division shall deny, revoke, or refuse to renew a license where it finds:

(a) There has been imminent danger to the health or safety of individuals or substantial failure to comply with these rules or where there is substantial non-compliance with local codes and ordinances, or any other state or federal law or rule applicable to the health and safety of individuals in an AFH-DD.

(b) The applicant or provider has a denied criminal records check from the Department.

(c) The applicant or provider is on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers.

(d) The provider fails to implement a plan of correction or comply with a final order of the Division imposing an administrative sanction.

(e) The provider refuses to allow access and inspections.

(f) If the denial, suspension, revocation, or refusal to renew occurred more than three years from the present action, the applicant or provider is required to establish to the Division by clear and convincing evidence his or her ability and fitness to operate an AFH-DD. If the applicant or provider does not meet this burden, then the Division shall deny, revoke, or refuse to renew the license.

(g) If a criminal records check is required on or after July 28, 2009 and the individual has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(h) The applicant or provider is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked, or refused to be renewed due to abuse of an adult, or failure to possess physical health, mental health, or good personal character within three years preceding the present action, unless the applicant or provider may demonstrate to the Division by clear and convincing evidence that the person does not pose a threat to the individuals.

(A) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:

(i) Resides with the person;

(ii) Employs the person in the AFH-DD;

(iii) Receives financial backing from the person for the benefit of the AFH-DD;

(iv) Receives managerial assistance from the person for the benefit of the AFH-DD; or

(v) Allows the person to have access to the AFH-DD.

(B) For purposes of this section only, "present action" means the date of the notice of denial, suspension, revocation, or refusal to renew.

(2) The Division may deny, revoke, or refuse to renew an AFH-DD license if the applicant or provider:

(a) Has a history of, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, or disruption of utility services due to failure to pay bills;

(b) Has threatened the health, safety, or welfare of any individual;

(c) Has a founded finding of abuse of a child or substantiated finding of abuse of an adult;

(d) Has a medical or psychiatric problem that interferes with the ability to provide care;

(e) Has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked, or refused to be renewed in this or any other state or suspension, revocation, or refusal to renew was due in any part to abuse of an adult or child, creating a threat to the individuals, or failure to possess physical health, mental health, or good personal character; or

(f) Has failed to pass the second AFH-DD Basic Training Examination.

(3) Failure to disclose requested information on the application, provision of incomplete or incorrect information on the application, or failure to renew their license shall constitute grounds for denial or revocation of the license.

(4) The provider to whom the notice is addressed, shall have 60 days from the date of service of the notice in which to make a written application for a hearing before the Division when the administrative sanction is a denial of a license. The provider shall have 60 days when the administrative sanction is a non-renewal of a license. The provider shall have 21 days when the administrative sanction is the revocation of a license.

(5) All hearings shall be conducted pursuant to the applicable provisions or ORS chapter 183.

ADMINISTRATIVE RULES

(6) If the provider notified fails to request a hearing within the time period specified in the notice an order may be entered by the Division.

Stat. Auth.: ORS 410.070 & 409.050
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 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10

411-360-0275

Immediate Suspension

(1) A license may be immediately suspended upon a finding by the Division of any of the following:

(a) There exists an immediate threat to the health, safety, or welfare of any individual.

(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.

(d) The AFH-DD provider has been found to have been convicted of a crime that would have resulted in a denied fitness determination.

(2) If the license is immediately suspended for the reason of abuse, neglect, or exploitation of an individual, the provider may request a review in writing within 10 days after notice of the immediate suspension.

(a) If a request is made, the Assistant Director of the Division shall review all material relating to the allegation of abuse, neglect, or exploitation and to the immediate suspension within 10 days of the request.

(b) The Assistant Director shall determine, based on review of the material, whether or not to sustain the decision to immediately suspend.

(c) If the Assistant Director determines not to sustain the decision, the license shall be restored immediately.

(d) If the Assistant Director's decision is to affirm the suspension the licensee has 21 days to appeal the decision in a contested case hearing.

(3) In the event the license to maintain an AFH-DD is ordered immediately suspended, the Division shall withhold service payments until the defective situation is corrected. For protection of individuals, the Division, or the Division's designee shall arrange for them to move.

Stat. Auth.: ORS 410.070 & 409.050
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

411-360-0280

Criminal Penalties

(1) Operating an AFH-DD without a license is punishable as a Class C misdemeanor.

(2) Refusing to allow the Department or the Department's designee access to the AFH-DD for inspection, access to individuals in order to interview individuals privately, access to review records, or access to the AFH-DD regarding fire safety by state and local fire inspector, is punishable as a Class B misdemeanor.

Stat. Auth.: ORS 410.070 & 409.050
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

411-360-0290

Enjoinment of Adult Foster Home (AFH) Operation

The Division may commence an action to enjoin operation of an AFH pursuant to ORS 443.775(8):

(1) When an AFH-DD is operated without a valid license; or

(2) After notice of revocation or suspension has been given, a reasonable time for placement of individuals in other facilities has been allowed, and such placement has not been accomplished.

Stat. Auth.: ORS 410.070 & 409.050
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

411-360-0300

Zoning for Adult Foster Homes

An AFH-DD is a residential use of property for zoning purposes. An AFH-DD is a permitted use in any residential zone, including a residential zone that allows a single family dwelling, and in any commercial zone that allows a single-family dwelling. No city or county may impose any zoning requirement on the establishment and maintenance of an AFH-DD in these zones that is more restrictive than a single-family dwelling in the same zone.

Stat. Auth.: ORS 410.070 & 409.050
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

411-360-0310

Public Information

(1) The Division, or the Division's designee, shall maintain current information on all licensed AFH-DD's and shall make that information available to prospective individuals, their families, and other interested members of the public.

(2) The information shall include:

(a) The location of the AFH-DD;

(b) A brief description of the physical characteristics of the home;

(c) The name and mailing address of the provider;

(d) The license classification of the home and the date the provider was first licensed to operate that home;

(e) The date of the last inspection, the name and telephone number of the office that performed the inspection, and a summary of the findings;

(f) Copies of all complaint investigations involving the home, together with the findings of and actions taken by the Division;

(g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions, or other actions taken by the Division involving the home; and

(h) Whether care is provided primarily by the licensed provider, a resident manager, or other arrangement.

(3) Any list of adult foster homes maintained or distributed by the Division shall include notification to the reader of the availability of public records concerning the AFH-DD's.

Stat. Auth.: ORS 410.070 & 409.050
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

Rule Caption: Elimination of State Funding for the Oregon Project Independence Program Effective July 16, 2010.

Adm. Order No.: SPD 14-2010(Temp)

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10 thru 12-27-10

Notice Publication Date:

Rules Amended: 411-032-0001

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending OAR 411-032-0001 to allow Area Agencies on Aging to modify eligibility and service determinations due to the elimination of State funding for the Oregon Project Independence Program. The Oregon Project Independence Program will not be funded after July 16, 2010.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-032-0001

Elimination of State Funding for the Oregon Project Independence Program Effective July 16, 2010

(1) Effective July 16, 2010, State funding for the Oregon Project Independence Program is eliminated.

(2) Notwithstanding any other rules, Area Agencies on Aging have discretion to consider the lack of State funding in making eligibility and service determinations.

(3) The Area Agency on Aging shall provide notice to clients of any decision to reduce or terminate services. Area Agency on Aging decisions to reduce or terminate service authorizations based upon lack of available State funding which are applied across the board and are not based upon an individualized eligibility or service determination are not subject to OAR 411-032-0020(4)(a), continuation of services.

Stat. Auth.: ORS 409.050, 410.070, & 410.420
Stats. Implemented: ORS 410.410 to 410.480
Hist.: SSD 12-1988, f. & cert. ef. 12-2-89; SDSD 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04; SPD 29-2006, f. 10-23-06, cert. ef. 11-1-06; SPD 14-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

Rule Caption: Closure of the Personal Care Services Program Effective August 1, 2010.

Adm. Order No.: SPD 15-2010(Temp)

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10 thru 12-27-10

Notice Publication Date:

Rules Amended: 411-034-0000

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending OAR 411-034-0000 to close the Personal Care Services Program as the

ADMINISTRATIVE RULES

Personal Care Services Program will not be funded after July 31, 2010. The amended rule will close the Personal Care Services Program effective August 1, 2010.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-034-0000

Closure of the Personal Care Services Program Effective August 1, 2010

(1) Effective August 1, 2010, the Personal Care Services Program is not funded. Notwithstanding other rules of the Department, the Personal Care Services Program is closed effective August 1, 2010.

(2) Effective August 1, 2010, all persons eligible for or receiving Personal Care Services Program benefits become ineligible for the Personal Care Services Program. The Department may not authorize or provide any personal care service benefits for any period after July 31, 2010.

(3) Effective August 1, 2010, all recipients that qualified for the Personal Care Services Program based on a medical program listed below, shall continue to receive medical benefits.

- (a) Extended Medical (EXT);
- (b) Medical Assistance Assumed (MAA);
- (c) Medical Assistance to Families (MAF);
- (d) Oregon Health Plan (OHP);
- (e) Oregon Supplemental Income Program Medical (OSIPM);
- (f) Temporary Assistance to Needy Families (TANF); or
- (g) Refugee Assistance (REF).

(4) Notwithstanding other rules of the Department, recipients receiving services under the Personal Care Services Program are not entitled to continuation of benefits pending a hearing on the closure of the Personal Care Services Program.

Stat. Auth.: ORS 410.020 & 410.070

Stats. Implemented: ORS 410.020, 410.070 & 410.710

Hist.: SSD 2-1996, f. 3-13-96, cert. ef. 3-15-96; SPD 35-2004, f. 11-30-04, cert. ef. 12-1-04;

SPD 16-2007, f. 10-4-07, cert. ef. 10-5-07; SPD 15-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10

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Rule Caption: Elimination of State Funding for the Oregon Project Independence Program Effective August 1, 2010.

Adm. Order No.: SPD 16-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Amended: 411-032-0001

Rules Suspended: 411-032-0001(T)

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending OAR 411-032-0001 to allow Area Agencies on Aging to modify eligibility and service determinations due to the elimination of State funding for the Oregon Project Independence Program. The Oregon Project Independence Program will not be funded after August 1, 2010.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-032-0001

Elimination of State Funding for the Oregon Project Independence Program Effective August 1, 2010

(1) Effective August 1, 2010, State funding for the Oregon Project Independence Program is eliminated.

(2) Notwithstanding any other rules, Area Agencies on Aging have discretion to consider the lack of State funding in making eligibility and service determinations.

(3) The Area Agency on Aging shall provide notice to clients of any decision to reduce or terminate services. Area Agency on Aging decisions to reduce or terminate service authorizations based upon lack of available State funding which are applied across the board and are not based upon an individualized eligibility or service determination are not subject to OAR 411-032-0020(4)(a), continuation of services.

Stat. Auth.: ORS 409.050, 410.070, & 410.420

Stats. Implemented: ORS 410.410 - 410.480

Hist.: SSD 12-1988, f. & cert. ef. 12-2-89; SDSD 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04; SPD 29-2006, f. 10-23-06, cert. ef. 11-1-06; SPD 14-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; SPD 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10

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Rule Caption: Elimination of the Family Support Services for Children with Developmental Disabilities Program Effective August 1, 2010.

Adm. Order No.: SPD 17-2010(Temp)

Filed with Sec. of State: 7-9-2010

Certified to be Effective: 7-9-10 thru 1-5-11

Notice Publication Date:

Rules Adopted: 411-305-0005

Subject: The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily adopting OAR 411-305-0005 to eliminate the Family Support Services for Children with Developmental Disabilities Program as the Family Support Services Program will not be funded after July 31, 2010. The amended rule will eliminate the Family Support Services Program effective August 1, 2010.

Rules Coordinator: Christina Hartman—(503) 945-6398

411-305-0005

Elimination of the Family Support Services for Children with Developmental Disabilities Program Effective August 1, 2010

(1) Effective August 1, 2010, the Family Support Services for Children with Developmental Disabilities Program is not funded. Notwithstanding other rules of the Department, the Family Support Services for Children with Developmental Disabilities Program is closed effective August 1, 2010.

(2) Effective August 1, 2010, the Department or its designees may not authorize or provide any Family Support Services for Children.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 427.005, 427.007, & 430.610 - 430.695

Hist.: SPD 17-2010(Temp), f. & cert. ef. 7-9-10 thru 1-5-11

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Department of Justice

Chapter 137

Rule Caption: Disclosure of information to Attorney General to monitor and enforce tobacco product manufacturer compliance.

Adm. Order No.: DOJ 10-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10

Notice Publication Date: 6-1-2010

Rules Adopted: 137-105-0050

Rules Repealed: 137-105-0050(T)

Subject: The Attorney General regulates the sale of tobacco products in Oregon. ORS 323.862 authorizes the Department of Revenue to disclose to the Attorney General information submitted to the Department relating to cigarettes, tobacco product manufacturers, and tobacco retailers so that the Attorney General can “monitor and enforce compliance” by tobacco product manufacturers. OAR 137-105-0050 clarifies the meaning of the certain terms used in ORS 323.862, including “information” and “monitoring and enforcing compliance.”

Rules Coordinator: Carol Riches—(503) 947-4700

137-105-0050

Monitoring and Enforcing Tobacco Product Manufacturer Compliance

(1) ORS 323.862 authorizes the Department of Revenue to disclose to the Attorney General, and such other parties as the Attorney General deems necessary, information submitted to the department relating to cigarettes, tobacco product manufacturers, and tobacco retailers to allow the Attorney General to monitor and enforce compliance by tobacco product manufacturers with ORS 323.800 to 323.806.

(2) For the purposes of ORS 323.862 and this rule:

(a) “Attorney General” includes attorneys employed by the Oregon Department of Justice;

(b) “Department” means the Department of Revenue;

(c) “Distributor” has the meaning given that term in ORS 180.405(3);

(d) “Information” and “information submitted to the department” means cigarette related documents and data submitted to the department, including but not limited to cigarette tax reports and returns filed by distributors, documents related to such tax reports and returns filed by distributors, and department audit documents relating to cigarette tax reports and returns. “Information” includes the amount of tax, penalty, interest, sales information, purchase information, and any other particulars, set forth or disclosed in a cigarette tax report or return or other cigarette related document submitted by a distributor to the Department;

ADMINISTRATIVE RULES

(e) "Legal proceeding" includes but is not limited to lawsuits in state or federal court, proceedings relating to the Master Settlement Agreement, arbitrations, mediations and settlement conferences or negotiations;

(f) "Master Settlement Agreement" has the meaning given that term in ORS 323.800;

(g) "Monitoring and enforcing compliance" includes, but is not limited to:

(A) Investigating and calculating the amount of escrow a nonparticipating manufacturer must deposit in a qualified escrow fund;

(B) Investigating and determining whether a nonparticipating manufacturer has deposited sufficient funds in a qualified escrow fund;

(C) Investigating and determining whether a participating manufacturer is generally performing its obligations under the Master Settlement Agreement;

(D) Investigating and demonstrating enforcement by the Attorney General or the State of Oregon of ORS 323.800 to 323.806 in a legal proceeding relating to ORS 323.800 to 323.806, 180.400 to 180.405 or the Master Settlement Agreement;

(E) Investigating and assessing whether a tobacco product manufacturer is in compliance with ORS 323.800 to 323.806 for the purposes of ORS 180.400 to 180.455;

(h) "Nonparticipating Manufacturer" has the meaning given that term in ORS 323.800;

(i) "Participating Manufacturer" has the meaning given that term in ORS 180.405;

(j) "Particulars" has the meaning given that term in ORS 314.835(2)(b);

(k) "Qualified escrow fund" has the meaning given that term in ORS 323.800;

(l) "Tobacco product manufacturer" has the meaning given that term in ORS 323.800.

Stat. Auth.: ORS 323.865

Stats. Implemented: ORS 323.862

Hist.: DOJ 9-2010(Temp), f. & cert. ef. 4-19-10 thru 10-15-10; DOJ 10-2010, f. & cert. ef. 6-30-10

Rule Caption: Child support guidelines: general provisions; calculating support; income; parenting time; rebuttals and timeframes for mailing.

Adm. Order No.: DOJ 11-2010

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 5-1-2010

Rules Adopted: 137-050-0760

Rules Amended: 137-050-0700, 137-050-0710, 137-050-0715, 137-050-0730, 137-055-2160, 137-050-0700(T), 137-050-0710(T), 137-050-0715(T), 137-050-0760(T), 137-055-2160(T)

Subject: OAR 137-050-0760 is adopted to provide factors for rebuttal to the presumed correct child support amount. This rule replaces the temporary rule which was effective January 4, 2010, and is changed from the version noticed on January 8, 2010, by adding return of capital to the list of possible rebuttals to income.

OAR 137-050-0700 is amended to clarify the manner in which support is to be calculated when a child does not reside with a parent.

OAR 137-050-0710 is amended to correct a math error in determining a parent's pro rata portion of combined income.

OAR 137-050-0715 is amended to remove return of capital from actual income.

OAR 137-050-0730 is amended to clarify how parenting time is calculated when a child does not reside with either parent.

OAR 137-055-2160 is amended to clarify time frames when service is made by mail, and is changed from the version noticed on January 8, 2010, by adding provisions for weekends and holidays, and for clarifying date of service for substitute service is by mailing, not by postmark.

Rules Coordinator: Vicki Tungate—(503) 986-6086

137-050-0700

General Provisions

(1) ORS 25.270 through ORS 25.280 require that child support be calculated according to a formula. The formula is known as the "Oregon Child Support Guidelines" and is contained in OAR 137-050-0700 through

OAR 137-050-0765 and in the "Obligation Scale" which is located in the appendix.

(2) Any change to the guidelines applies to all judicial or administrative actions which are pending as of the date of the change or initiated thereafter.

(3) Changes to these rules do not constitute a substantial change in circumstances for purposes of modifying a support order.

(4) "Pending" as used in section (2) means any matter that has been initiated before the effective date of a rule change but requires amendment, modification or hearing before a final judgment can be entered.

(5) The method of calculating child support described in OAR 137-050-0710 presumes that a child lives with one parent and an order is sought to determine the support obligation between the child's parents. When a child does not reside with either parent and an order is sought to reimburse a third party for support of the child, follow OAR 137-050-0710 with the following exceptions: calculate each obligated parent's support obligation separately, using the obligated parent's information and the caretaker's child care costs, if any. For the other parent in the calculation, use the same amounts shown for the obligated parent's income, spousal support, union dues and number of additional children.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345

Stats. Implemented: ORS 25.270 - 25.290

Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 5-2010(Temp), f. & cert. ef. 2-12-10 thru 8-10-10; DOJ 11-2010, f. & cert. ef. 7-1-10

137-050-0710

Calculating Support

(1) Apply standard rules of rounding to perform a child support calculation under the guidelines. Round to the hundredth place (two decimal places). For example, if the number beyond the one to be used is less than five, round the number down (2.443 becomes 2.44). If the number beyond the one to be used is equal to or greater than five, round up (2.445 becomes 2.45).

(2) Although reliable and comprehensive data is not available for costs of children between the ages of 18 and 21, the guidelines are used to calculate appropriate support amounts for a child attending school as defined in ORS 107.108. The presumption that the amounts are appropriate may be rebutted under OAR 137-050-0760.

(3) Determine an appropriate amount of support by following the steps in sections (4) through (16).

(4) Determine each parent's income as defined in OAR 137-050-0715.

(5) Determine each parent's adjusted income, as provided in OAR 137-050-0720.

(6) Determine each parent's income share by dividing the total combined income into each parent's individual adjusted income.

(7) Determine the basic support obligation and the parents' shares, as provided in OAR 137-055-0725.

(8) Determine parenting time credit, if any, as provided in OAR 137-050-0730.

(9) Determine each parent's costs for child care, as provided in OAR 137-050-0735.

(10) Determine the credit to be applied to the support obligation as a result of any Social Security or veterans' benefits as provided in OAR 137-050-0740.

(11) Determine each parent's support obligation before medical support by adding the parent's basic support obligation, subtracting the parenting time credit, adjusting for child care expenses, and subtracting the amount of credit given for Social Security or veterans' benefits. If the total is less than zero, use zero.

(12) Determine each parent's support obligation after application of the self-support reserve as provided in OAR 137-050-0745. Round the result to the nearest dollar.

(13) Determine each parent's medical support obligation, as provided in OAR 137-050-0750. Round the result to the nearest dollar.

(14) Determine whether the provisions of OAR 137-050-0755 (minimum order) apply, and if appropriate, enter the amount of the minimum order.

(15) If the support amount is unjust or inappropriate, as authorized in ORS 25.280, apply any appropriate rebuttal as provided in OAR 137-050-0760. Round the result to the nearest dollar.

(16) Determine whether an agreed support amount is appropriate as provided in OAR 137-050-0765.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345

Stats. Implemented: ORS 25.270 - 25.290

Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 5-2010(Temp), f. & cert. ef. 2-12-10 thru 8-10-10; DOJ 11-2010, f. & cert. ef. 7-1-10

ADMINISTRATIVE RULES

137-050-0715

Income

(1) "Income" means the actual or potential gross income of a parent, as determined in this rule.

(2) "Actual income" means all earnings and income from any source, except as provided in section (4). Actual income includes but is not limited to:

(a) Employment-related income including salaries, wages, commissions, advances, bonuses, dividends, severance pay, pensions, and honoraria;

(b) Return on capital, such as interest, trust income and annuities;

(c) Income replacement benefit payments including Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits;

(d) Gifts and prizes, including lottery winnings;

(e) Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, minus costs of good sold, minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the fact finder to be inappropriate or excessive for determining gross income; and

(f) Expense reimbursements or in kind payments received by a parent in the course of employment, self employment, or operation of a business are income to the extent they reduce personal living expenses.

(3) To determine average monthly income when wages are paid weekly, multiply the weekly earnings by 52 and divide by 12. To determine average monthly income when wages are paid every two weeks, multiply the bi-weekly income earnings by 26 and divide by 12.

(4) Child support, adoption assistance, guardianship assistance, and foster care subsidies are not considered income for purposes of this calculation.

(5) "Potential income" means the greater of:

(a) The parent's probable full-time earnings level based on employment potential, relevant work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community; or

(b) The amount of income a parent could earn working full-time at the current state minimum wage.

(6) Income is presumed to be the amount determined as potential income in the following scenarios:

(a) An unemployed parent;

(b) A parent employed on less than a full-time basis;

(c) A parent with income less than Oregon minimum wage for full-time employment; or

(d) A parent with no direct evidence of any income.

(7) Income is presumed to be the parent's actual income in the following scenarios.

(a) A parent working full-time at or above the state minimum wage;

(b) A parent unable to work full-time due to a verified disability;

(c) A parent receiving workers' compensation benefits;

(d) An incarcerated obligor as defined in OAR 137-055-3300; or

(e) When performing a calculation for a temporary modification pursuant to ORS 416.425(13), except as provided in section (9) of this rule.

(8) The presumptions in sections (6) and (7) of this rule may be rebutted by a finding that the presumption is inappropriate in light of the parent's probable full-time earnings level based on employment potential, relevant work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community.

(9) Notwithstanding any other provision of this rule, if the parent is a recipient of Temporary Assistance for Needy Families, the parent's income is presumed to be the amount which could be earned by full-time work at the current state minimum wage. This income presumption is solely for the purposes of the support calculation and not to overcome the rebuttable presumption of inability to pay in ORS 25.245.

(10) As used in this rule, "full-time" means 40 hours of work in a week except in those industries, trades or professions in which most employers, due to custom, practice or agreement, utilize a normal work week of more or less than 40 hours in a week.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345

Stats. Implemented: ORS 25.270 - 25.290

Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 6-2010(Temp), f. & cert. ef. 2-12-10 thru 7-1-10; DOJ 11-2010, f. & cert. ef. 7-1-10

137-050-0730

Parenting Time Credit

(1) For the purposes of this rule, "split custody" means that there are two or more children and each parent has at least one child more than 50 percent of the time.

(2) If there is a current written parenting time agreement or court order providing for parenting time, the percentage of overall parenting time for each parent must be calculated as follows:

(a) Determine the average number of overnights using two consecutive years.

(b) Multiply the number of children by 365 to arrive at a total number of child overnights. Add together the total number of overnights the parent is allowed with each child and divide the parenting time overnights by the total number of child overnights.

(c) Notwithstanding the calculation provided in subsections (2)(b) and (2)(c), the percentage of parenting time may be determined using a method other than overnights if the parents have an alternative parenting time schedule in which a parent has significant time periods where the child is in the parent's physical custody but does not stay overnight. For example, in lieu of overnights, 12 continuous hours may be counted as one day. Additionally, four-hour up to 12-hour blocks may be counted as half-days, but not in conjunction with overnights. Regardless of the method used, blocks of time may not be used to equal more than one full day per 24-hour period.

(3) If the parents have split custody but no written parenting time agreement, determine each parent's percentage share of parenting time by dividing the number of children with the parent by the total number of children.

(4) If there is no written parenting time agreement or court order providing for parenting time, the parent or party having primary physical custody will be treated as having 100 percent of the parenting time, unless a court or administrative law judge determines actual parenting time.

(5) If the court or administrative law judge determines actual parenting time exercised by a parent is different than what is provided in a written parenting plan or court order, the percentage of parenting time may be calculated using the actual parenting time exercised by the parent.

(6) If each parent's parenting time is at least 25 percent, or the child resides with a caretaker or is in the care of a state agency and the obligated parent has at least 25 percent parenting time, a parenting time credit will be calculated as follows:

(a) Multiply the combined basic child support obligation by 1.5 (150 percent); and

(b) Except as provided in subsection (c), multiply each parent's percentage share of parenting time by the combined basic child support obligation in subsection (a). The result is the amount of credit to be subtracted from the obligation determined in subsection (a) for each parent;

(c) If the child resides with a caretaker or is in the care of a state agency, multiply the obligated parent's percentage share of parenting time by the combined basic child support obligation in subsection (a). The result is the amount of credit to be subtracted from the obligation determined in subsection (a).

(7) The parenting time credit is applied to the entire support obligation, including any support obligation for a child attending school.

Stat. Auth.: ORS 25.270 - 25.290, 180.345

Stats. Implemented: ORS 25.270 - 25.290

Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 11-2010, f. & cert. ef. 7-1-10

137-050-0760

Rebuttals

(1) The presumed support amount may be rebutted by a finding that sets out the presumed amount, concludes that this amount is unjust or inappropriate, and states the reason the presumed amount is unjust or inappropriate. The rebuttal factors may be applied by adjusting the income of a parent, the costs for the child or the presumed support amount. The rebuttal factors include but are not limited to:

(a) Evidence of the other available resources of the parent;

(b) The reasonable necessities of the parent;

(c) The net income of the parent remaining after withholding required by law or as a condition of employment;

(d) A parent's ability to borrow;

(e) The number and needs of other dependents of a parent;

(f) The special hardships of a parent affecting the parent's ability to pay support, including, but not limited to, any medical circumstances, extraordinary travel costs related to the exercise of parenting time, or requirements of a reunification plan if the child is in state-financed care;

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(g) The desirability of the custodial parent remaining in the home as a full-time parent or working less than full-time to fulfill the role of parent and homemaker;

(h) The tax consequences, if any, to both parents resulting from spousal support awarded, the determination of which parent will name the child as a dependent, child tax credits, or the earned income tax credit received by either parent;

(i) The financial advantage afforded a parent's household by the income of a spouse or domestic partner;

(j) The financial advantage afforded a parent's household by benefits of employment including, but not limited to, those provided by a family owned corporation or self-employment, such as housing, food, clothing, health benefits and the like, but only if unable to include those benefits as income under OAR 137-050-0715;

(k) Evidence that a child who is subject to the support order is not living with either parent or is a child attending school as defined in ORS 107.108;

(l) Findings in a judgment, order, decree or settlement agreement that the existing support award is or was made in consideration of other property, debt or financial awards, and those findings remain relevant;

(m) The net income of the parent remaining after payment of mutually incurred financial obligations;

(n) The tax advantage or adverse tax effect of a parent's income or benefits;

(o) The extraordinary or diminished needs of the child, except:

(A) Expenses for extracurricular activities and

(B) Social Security benefits paid to a child because of a child's disability;

(p) The return of capital.

(2) Amounts used to rebut income will be applied prior to determining income shares. Amounts used to rebut costs will be based on the respective income shares of the parties. Amounts used to rebut the presumed support amount will be applied on a dollar-for-dollar basis.

Stat. Auth.: ORS 25.270 - 25.290 & 180.345

Stats. Implemented: ORS 25.270 - 25.290

Hist.: DOJ 17-2009(Temp), f. 12-1-09, cert. ef. 1-4-10 thru 7-1-10; DOJ 3-2010(Temp), f. & cert. ef. 1-8-10 thru 7-1-10; DOJ 6-2010(Temp), f. & cert. ef. 2-12-10 thru 7-1-10; DOJ 11-2010, f. & cert. ef. 7-1-10

137-055-2160

Requests for Hearing

(1) A request for hearing must be in writing and signed by the party, the party's authorized representative, or the administrator.

(2) A request for hearing may be made on a form provided by the Child Support Program (CSP) and must contain the party's residence, mailing or contact address, a telephone number where the party can be contacted and the reasons for objection to the contested case notice.

(3) A request for hearing must be received by the CSP office which issued the action within the time provided by law or notice in order to be considered timely.

(4) A new or amended request for hearing is not required from the requesting party to obtain a hearing if the administrator amends the order being appealed, unless the administrator notifies the requesting party that an additional request is required.

(5) When a party requests a hearing after the time specified by the administrator, the administrator will handle the request pursuant to OAR 137-003-0528, except that the administrator may accept the late request only if:

(a) The request is received before or within 60 days after entry of a final order by default;

(b) The circuit court has not approved the final order or there is no appeal of the final order pending with the circuit court, and

(c) The cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or Oregon Child Support Program administrative rules provide a different time frame or standard.

(6) Notwithstanding the provisions of section (5) of this rule, a request for hearing is not considered a late hearing request when:

(a) Parentage testing has been conducted pursuant to ORS 109.252 and 416.430 which includes the man as the biological father of the child, and a request for hearing has been received from a party within 30 days from the date of service of the Notice of Intent to Enter Order/Judgment establishing paternity and the notice of parentage testing results; or

(b) A party has denied paternity and failed to appear for parentage tests, an order establishing paternity has been entered, and a request for hearing has been received from a party within 14 days from the date the order establishing paternity was mailed to the parties.

(7) For the purpose of computing any period of time under this rule, except as otherwise provided, any response period begins to run on the following date:

(a) If service is by certified mail, on the date the party signs a receipt for the mailing;

(b) If service is by regular mail:

(A) Three days after the mailing date if mailed to an address in Oregon;

(B) Seven days after the mailing date if mailed to an address outside Oregon; or

(c) The date evidence shows the party received the mailing.

(8) Except as provided in subsection (9)(b) the dates in section (7) are computed based on calendar days, not business days.

(9)(a) In computing any period of time under this rule, do not count the date of mailing as the first day; and

(b) If the last day falls on a Saturday, Sunday or legal holiday, do not count that day as a calendar day.

(10) The provisions of sections (7) through (9) do not apply to service on a party by regular mail to complete substitute service. For substitute service, the service date is the date the document is mailed.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 183.415

Hist.: AFS 5-1995, f. & ef. 2-6-95; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0830; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-2160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-2160; DOJ 2-2006(Temp), f. & cert. ef. 1-3-06 thru 6-30-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 10-2008, f. & cert. ef. 7-1-08; DOJ 2-2010(Temp), f. & cert. ef. 1-4-10 thru 7-1-10; DOJ 11-2010, f. & cert. ef. 7-1-10

Rule Caption: Protected personal information in child support cases.

Adm. Order No.: DOJ 12-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 9-1-10 thru 2-25-11

Notice Publication Date:

Rules Amended: 137-055-1160

Subject: OAR 137-055-1160 is amended to remove a reference to ORS 25.020. This amendment will mean that a child's date of birth is no longer protected personal information in an agency finding of risk and order for nondisclosure.

Rules Coordinator: Vicki Tungate—(503) 986-6086

137-055-1160

Confidentiality — Finding of Risk and Order for Nondisclosure of Information

(1) For the purposes of this rule in addition to the definitions found in OAR 137-055-1020, the following definitions apply:

(a) "Claim of risk for nondisclosure of information" means a claim by a party to a paternity or support case made to the administrator, an administrative law judge or the court that there is reason to not contain or disclose the information specified in OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information;

(b) "Finding of risk and order for nondisclosure of information" means a finding and order by the administrator, an administrative law judge or the court, which may be made ex parte, that there is reason to not contain or disclose the information specified in OAR 137-055-1140(6)(a) because the health, safety or liberty of a party or child would unreasonably be put at risk by disclosure of such information.

(2) A claim of risk for nondisclosure of information may be made to the administrator by a party at any time that a child support case is open. Forms for making a claim of risk for nondisclosure of information will be available from all child support offices and be made available to other community resources. At the initiation of any legal process that would result in a judgment or administrative order establishing paternity or including a provision concerning support, the administrator will provide parties an opportunity to make a claim of risk for nondisclosure of information.

(3)(a) When a party makes a written and signed claim of risk for nondisclosure of information pursuant to section (2) of this rule, the administrator will make a finding of risk and order for nondisclosure of information unless the party does not provide a contact address pursuant to section (5) of this rule;

(b) When a party is accepted into the Address Confidentiality Program (ACP), the administrator will make a finding of risk and order for

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nondisclosure of information. The party's contact address will be the ACP substitute address designated by the Attorney General pursuant to OAR 137-079-0150.

(4) An administrative law judge will make a finding of risk and order for nondisclosure of information when a party makes a claim of risk for nondisclosure of information in a hearing unless the party does not provide a contact address pursuant to section (5) of this rule.

(5) A party who makes a claim of risk for nondisclosure of information under subsection (3)(a) or section (4) must provide a contact address that is releasable to the other party(ies) in legal proceedings. The claim of risk for nondisclosure of information form provided to the party by the administrator must have a place in which to list a contact address. If a requesting party does not provide a contact address, a finding of risk and order for nondisclosure of information will not be made.

(6) When an order for nondisclosure of information has been made, the administrator must ensure that all pleadings, returns of service, orders or any other documents that would be sent to the parties or would be available as public information in a court file does not contain or must have deleted any of the identifying information specified in OAR 137-055-1140(6)(a). Any document sent to the court that contains any of the information specified in OAR 137-055-1140(6)(a) must be in a sealed envelope with a cover sheet informing the court of the confidential nature of the contents or in the manner provided by UCR 2.130.

(7) A finding of risk and order for nondisclosure of information entered pursuant to this rule will be documented on the child support case file and will remain in force until such time as the ACP participant or party who requested a claim of risk retracts the claim or requests dismissal in writing.

(8) A party who requested a claim of risk may retract the claim on a form provided by the administrator. When a signed retraction form is received by the administrator, the administrator will enter, or will ask the court to enter, a finding and order terminating the order for nondisclosure of information.

(9) Any information previously protected under an order for nondisclosure of information will be subject to disclosure when the order for nondisclosure of information is terminated. The retraction form provided by the administrator will advise the requestor that previously protected information may be released to the other party(ies).

(10) In cases where the administrator is not involved in the preparation of the support order or judgment establishing paternity, or when child support services under ORS 25.080 are not being provided, any claim of risk for nondisclosure of information pursuant to ORS 25.020 must be made to the court.

(11) Notwithstanding section (5) of this rule, where the court has made a finding of risk and order for nondisclosure of information and the case is receiving or subsequently receives child support services pursuant to ORS 25.080, the administrator will implement the court's finding pursuant to this rule. In such a case, the administrator will use, in order of preference, the party's contact address as contained in the court file, or the party's contact address previously provided to the Child Support Program. If no contact address is available through either of these sources, the administrator will send a written request to the party, asking that the party provide a contact address. The written request from the administrator must advise the party that if no contact address is provided within 30 days, the administrator will use, in order of preference, the party's mailing or residence address as the contact address, and the new contact address may be released to the other party(ies).

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 25.020 & 180.345
Stats. Implemented: ORS 25.020, 192.820 - 192.858
Hist.: AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 19-1998, f. 10-5-98, cert. ef. 10-7-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0291; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1160; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1160; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 1-2007, f. & cert. ef. 1-2-07; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 8-2009, f. 7-1-09, cert. ef. 8-1-09; DOJ 12-2010(Temp), f. 7-1-10, cert. ef. 9-1-10 thru 2-25-11

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Rule Caption: Child support order modifications due to changes of circumstance.

Adm. Order No.: DOJ 13-2010(Temp)

Filed with Sec. of State: 7-1-2010

Certified to be Effective: 7-1-10 thru 12-27-10

Notice Publication Date:

Rules Amended: 137-055-3430

Subject: OAR 137-055-3430 is amended to clarify when orders will be modified without regard to whether the order is in substantial compliance with the guidelines.

Rules Coordinator: Carol Riches—(503) 947-4700

137-055-3430

Substantial Change in Circumstance Review and Modification of Child Support Order Amounts

(1) For purposes of this rule:

(a) The definitions provided in ORS 25.321, OAR 137-050-0750 and 137-055-3420 apply;

(b) A "temporary modification" is an order entered under ORS 416.425(13), which suspends and temporarily modifies a support order based on a party's employment-related change of income; and

(c) "Employment-related change of income" includes but is not limited to reduced work hours, unpaid furloughs, loss of job and wage reductions. Employment-related change of income does not include a voluntary reduction of income or self-imposed curtailment of earning capacity, if it is shown that such action was not taken in good faith but was for the primary purpose of avoiding the support obligation. A party's employment-related change of income is considered to take place "during a period of significant unemployment" even if the change occurred prior to the Attorney General's determination under ORS 416.425(13)(b), as long as the effects of the employment-related change of income continue into the time period covered by the determination.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstance.

(3) The administrator will conduct a review based upon a request for a change of circumstance modification when:

(a) Oregon has jurisdiction to modify;

(b) The administrator:

(A) Receives a request for modification based upon a change of circumstance and at least 60 days have passed from the date the existing support order was entered, except for those cases where a review is requested pursuant to paragraphs (3)(c)(H) or (I);

(B) Determines that a temporary modification should be initiated based on receipt of a request from a party who has experienced an employment-related change of income; or

(C) Determines that a modification should be initiated based on the administrator's own motion; and

(c) At least one of the following criteria are met:

(A) A change in the written parenting time agreement or order has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(D) Veterans' benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before May 12, 2003;

(E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;

(F) Since the date of the last order, the obligor has been incarcerated, as defined in OAR 137-055-3300;

(G) The needs of the child(ren) have changed;

(H) There is a need to add or change medical support provisions for a child;

(I) A change in the physical custody of a minor child has taken place;

(J) An order is being modified to include a subsequent child of the parties or to remove a child of the parties; or

(K) A child between 18 and 20 years old does not qualify as a child attending school under ORS 107.108 and OAR 137-055-5110 and, pursuant to ORS 107.108(10), tiered order provisions must be added, removed or changed. Tiered order has the meaning given in OAR 137-055-1020.

(d) And the requesting party (if other than the administrator):

(A) Completes a written or verbal request for modification based upon a substantial change of circumstance;

(B) Pursuant to ORS 416.425, provides appropriate documentation for the criteria in subsection (c) of this section showing that a substantial change of circumstance has occurred; and

(C) Completes a Uniform Income Statement or Uniform Support Affidavit or, if a temporary modification, provides employment status and

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income information sufficient to permit the administrator to have a reasonable basis to make a determination.

(4) Sections (5) through (9) do not apply to temporary modifications.

(5) Upon receipt of a request for a review and modification, or upon the administrator's own initiative, the administrator will notify the parties of the review in writing, allowing the parties 30 days to provide information which may affect the support calculation.

(6) A request for review will be granted unless:

(a) The conditions in section (3) have not been met; or

(b) The review was requested due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(G), and the order is in substantial compliance with the guidelines. The determination of substantial compliance will be made as outlined in OAR 137-055-3420(1)(d), except as provided in section (7).

(7) The provisions of subsection (6)(b) do not apply if the new calculation:

(a) Includes consent by the parties as provided in OAR 137-050-0765;

(b) Includes compelling factors in the reasonable-in-cost limitation, as provided in OAR 137-050-0750(2)(a);

(c) Includes application of rebuttals, as provided in OAR 137-050-0760; or

(d) Is for a modification to consider receipt of Social Security or Veterans' benefits as provided in paragraphs (3)(c)(C) or (D).

(8) If the request for review is granted, the administrator will advise the parties of the presumed correct support amount. Notification may be by motion for modification and will include a request for hearing form. If there is an adult child on the case, the proposed modification will be a tiered order as defined in OAR 137-055-1020.

(9) If the order is found to be in substantial compliance, and at least 35 months have passed since the date the most recent support order took effect, the administrator will complete the request as provided in OAR 137-055-3420(9).

(10) Sections (11) and (12) apply only to temporary modifications.

(11) The administrator will, to the extent possible, gather information from the parties which could affect the support calculation by phone or other electronic means, including facsimile and e-mail. Parties may agree to accept service by e-mail, regular mail or any other method.

(12) The administrator will advise the parties of the presumed correct support amount and may seek a consent order. Notification may be by motion for modification and will include a request for hearing form.

(13) If a request under this rule is denied, the administrator will notify the requesting party of the denial in writing within 30 days and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will advise the party on how to obtain the Oregon Judicial Department packet that has been prescribed for this purpose.

(14) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

(15) If a request for review and modification is received because a change in the physical custody of the minor child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

Stat. Auth.: ORS 180.345 & 416.455

Stats. Implemented: ORS 25.080, 25.287, 25.321 - 25.343, 107.108, 107.135 & 416.425

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 4-2005, f. & cert. ef. 4-1-05; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f. & cert. ef. 1-3-06; DOJ 5-2006, f. 6-29-06, cert. ef. 7-3-06; DOJ 8-2007, f. 9-28-07, cert. ef. 10-1-07; DOJ 4-2009(Temp), f. 5-6-09, cert. ef. 5-7-09 thru 11-1-09; DOJ 6-2009(Temp), f. & cert. ef. 5-14-09 thru 11-1-09; DOJ 13-2009, f. & cert. ef. 10-30-09; DOJ 13-2010(Temp), f. & cert. ef. 7-1-10 thru 12-27-10

Department of Oregon State Police Chapter 257

Rule Caption: Amends the department's rules to allow Regional Information Sharing Systems to access criminal offender information.

Adm. Order No.: OSP 4-2010(Temp)

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 7-1-10 thru 12-28-10

Notice Publication Date:

Rules Amended: 257-010-0015, 257-010-0020, 257-010-0025, 257-010-0045, 257-010-0050

Subject: Pursuant to ORS 181.030, each member of the Department is authorized and empowered to prevent crime, pursue and apprehend offenders, obtain legal evidence necessary to ensure criminal con-

victions of offenders, institute criminal proceedings, and execute any lawful warrant or order of arrest issued against any person or persons for any violation of law. Regional Information Sharing Systems (RISS) are inter jurisdictional intelligence entities designed to identify, target, and remove criminal conspiracies and activities and terrorist conspiracies and activities that span jurisdictional boundaries, pursuant to 42 USC section 3796(h) and 28 CFR Part 23. While membership in RISSs is limited to law enforcement agencies, how an RISS functions as an entity differs across the United States. In some cases, the RISS is operated and managed by a criminal justice agency. In other cases, the RISS is created as a distinct legal entity, i.e. a non-profit corporation. While the Department's current administrative rules allow criminal justice agencies to access criminal offender information for criminal justice purposes, its rules do not allow RISSs created as distinct legal entities to access criminal offender information. Allowing RISSs, even when they are created as distinct legal entities, clearly advances the duties and responsibilities placed on OSP by the Oregon legislature. The amendments to OAR 257-010-0015, 257-010-0020, 257-010-0025, 257-010-0045, and 257-010-0050 allow all RISSs to access the Department's criminal offender information so that both the RISSs and the Department can carry out their missions of stopping criminal and terrorist conspiracies and activities that occur across state jurisdictional lines.
Rules Coordinator: Cort Dokken—(503) 934-0228

257-010-0015

Definitions

As used in these rules:

(1) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement (confinement shall not include the retention by the Oregon State Police of records of transfer of inmates between penal institutions or other correctional facilities), and release, and includes the OSP Computerized Criminal History System.

(2) "Agency Agreement" means a written agreement between OSP and a Criminal Justice or Designated Agency as defined by ORS 181.010 authorized to receive criminal offender information, or between OSP and any state, federal, Native American tribe or private agency specifically granted authority by statute to receive Oregon criminal offender information, specifying the terms and conditions of accessing and receiving Oregon CCH Information.

(3) "Computerized Criminal History (CCH) System" means the administration and maintenance of on-line computer files of significant criminal offender information.

(4) "OSP" means the Oregon State Police and includes the Identification Services Section (ISS) and the Law Enforcement Data System (LEDS).

(5) "Oregon CCH System" means the Oregon Computerized Criminal History System.

(6) "Federal Criminal Offender Information System" means the national computerized criminal history system maintained and operated by the Federal Bureau of Investigation (FBI) which includes the Interstate Identification Index.

(7) "Criminal Justice Agency" means:

(a) The Governor;

(b) Courts of Criminal Jurisdiction;

(c) The Attorney General;

(d) District Attorneys, City Attorneys with criminal prosecutive functions and public defender organizations established under ORS Chapter 151;

(e) Law Enforcement Agencies;

(f) The Department of Corrections;

(g) The State Board of Parole and Post-Prison Supervision;

(h) The Board on Public Safety Standards and Training; and

(i) Any other state or local agency with law enforcement authority designated by order of the Governor.

(8) "Designated Agency" means any state, county or municipal government agency where Oregon criminal offender information is required to implement a federal or state statute, executive order or administrative rule that expressly refers to criminal conduct and contains requirements or

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exclusions expressly based on such conduct or for agency employment purposes, or licensing purposes, or other demonstrated and legitimate needs when designated by order of the Governor.

(9) "Regional Information Sharing System (RISS)" means an inter-jurisdictional intelligence system, in whatever form, designed pursuant to 42 USC § 3796(h) and 23 CFR Part 23 to identify, target, and remove criminal conspiracies and activities and terrorist conspiracies and activities that occur across law enforcement and state jurisdictional boundaries.

(10) "State Control Terminal" means the agency within each state which is responsible for the state's computer link with the National Crime Information Center and National Law Enforcement Telecommunications System, Inc., and which is responsible for ensuring that NCIC and NLETS system security and operational policies and procedures are carried out within the state.

(11) "Law Enforcement Agency" means county sheriffs, municipal police departments, state police, other police officers of this and other states, and law enforcement agencies of the federal government.

(12) "Administration of Criminal Justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information. Criminal justice employment investigations are included, as is the licensing of or issuing of a permit for a weapon or explosive when required to be performed by a Criminal Justice Agency, pursuant to a federal, state or local law.

(13) "Firearm Instant Check System" means information received from Oregon Gun Dealers as defined in 18 U.S.C. § 921, concerning the selling, leasing or otherwise transferring a firearm and compiled by the Oregon State Police under authority of ORS 166.412 for purposes of determining if the person purchasing the firearm is disqualified from purchasing a firearm under Oregon or Federal Law and if the firearm being purchased is stolen.

(14) "Authorized agency" means the Department of State Police or other governmental agency designated by the state to report, receive or disseminate criminal offender information.

(15) "Qualified entity" means a business or organization that:

(a) Provides care or placement services, or licenses or certifies others to provide care or placement services, for children, elderly persons or dependent persons;

(b) Is not governed by a state regulatory or licensing agency; and

(c) Has been determined by an authorized agency to meet the criteria established by the authorized agency by rule under subsection (9) of this section.

(16) "Subject individual" means a person who is employed or seeks to be employed by a qualified entity or who is providing services or seeks to provide services to a qualified entity on a contractual or voluntary basis.

(17) "Organization" means a qualified entity that:

(a) Is exempt from taxation under section 501(c) of the Internal Revenue Code, as amended and in effect on January 1, 2002; and

(b) Provides mentoring programs or tutoring programs.

(18) "Tutoring program" means a program that provides a committed, sustained, one-to-one relationship between a volunteer and a youth, dependent person or elderly person. A sustained relationship typically lasts nine months or longer.

(19) "Youth" means a person who has not attained 18 years of age.

(20) "Dependent person" means a person who, because of physical or mental disability, or medical disability due to alcohol or drug dependence, needs mentoring or tutoring programs.

(21) "Elderly person" means a person 65 years of age or older.

Stat. Auth.: ORS 181.537, 181.538, 181.555, 181.556, 181.560(4), 183.310 - 183.550, 192.44 & 194.164

Stats. Implemented: ORS 181.538 & 181.556

Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; DSP 1-1981, f. & ef. 5-1-81; DSP 3-1981, f. 10-30-81, ef. 11-1-81; OSP 3-1988, f. 8-22-88, cert. ef. 9-1-88; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 1-1991, f. 5-17-91, cert. ef. 7-1-91; OSP 4-1993, f. & cert. ef. 12-20-03; OSP 4-1994, f. & cert. ef. 8-2-94; OSP 3-1996, f. & cert. ef. 3-22-96; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 4-2010(Temp), f. 6-29-10, cert. ef. 7-1-10 thru 12-28-10

257-010-0020

System Responsibilities

(1) Maintenance and Dissemination of Criminal Offender Information. The Oregon State Police has statutory and administrative responsibility for the maintenance and dissemination of criminal offender information in Oregon.

(2) Accuracy and Completeness of Information. Information entered into Criminal Offender Information files is based on written documents submitted to the OSP by Criminal Justice Agencies reporting their record of official action, which documents contain fingerprint or other verification as to the identity of the individual to whom the information refers:

(a) OSP is responsible for the accuracy and completeness of information entered into the Oregon Criminal Offender Information System and any information subsequently transmitted for inclusion in the FBI Interstate Identification Index;

(b) This responsibility extends only to information contained in the documents as submitted to OSP.

(3) Removal of Information. OSP is responsible for removal of information from the Oregon and Federal Criminal Offender Information Systems when required by law or court order. In the event the OSP discovers there has been an erroneous entry in criminal offender information records maintained by OSP or the FBI, OSP shall correct or purge the inaccurate information.

(4) Entry of Information. Only terminals located at the OSP, Identification Services Section or others designated by the Superintendent of the OSP are allowed to enter, update, or modify records in the Oregon CCH File. Entry of information by other forms of electronic communications, as in the case of integration of computer systems, must be approved by the Superintendent of the OSP.

(5) Information to Qualified Criminal Justice and Designated Agencies. OSP is responsible for providing Criminal Offender Information to qualified Criminal Justice and Designated Agencies. Such information will be furnished, after proper inquiry, in either computerized or document form.

(6) Information to Regional Information Sharing Systems. OSP is responsible for providing Criminal Offender Information in computerized form to Regional Information Sharing Systems. Such information will be furnished, after proper inquiry, only if it exists in computerized form.

(7) Development of Operational Procedures. OSP is responsible for development of operational procedures to be followed by Criminal Justice and Designated Agencies permitted access to Oregon Criminal Offender Information and FBI Interstate Identification Index files.

(8) All Criminal Offender information distributed by the OSP shall contain a notice in writing in substantially the following language: Because additions or deletions may be made at any time, a new CCH record should be requested when needed for subsequent use.

(9) All agencies shall insofar as is feasible, taking into consideration the then existing capability of the OSP to respond, request and obtain a current criminal offender information record when that record is to be disseminated outside that agency.

(10) NCIC and NLETS Control Terminal Responsibility. OSP is the "state control terminal" for the NCIC and NLETS computer interface to Oregon and is responsible for assuring that all policies and rules for computer access to Oregon and Federal Criminal Offender Information Systems are adhered to by Oregon user agencies and Regional Information Sharing Systems.

(11) System Development and Operation. OSP is responsible for providing the computer hardware and software capabilities necessary to insure secure access, efficient processing and integrity of the information stored in the Oregon Criminal Offender Information System and for interfacing to the Federal Criminal Offender Information System.

(12) Physical Security of Computer Installation. OSP is responsible for development and implementation of policies and procedures to safeguard the criminal offender information at the central computer site from accidental or malicious damage or unauthorized access or use.

(13) Audit and Inspection of the User Agencies. OSP is responsible for periodically auditing and inspecting each computer terminal location accessing Oregon and Federal Criminal Offender Information to insure compliance with state and federal law, published rules, policies, and procedures.

(14) CCH computer terminal transaction records will be maintained at and by OSP and will be made available, upon written request, to participating Criminal Justice Agencies.

Stat. Auth.: ORS 181.555, 181.560(4), 183.310 - 183.550 & 192.440
Stats. Implemented: ORS 166.291, 166.412 & 181.880

Hist.: DSP 2, f. 6-14-74, ef. 7-11-74, DSP 4, f. 4-22-76, ef. 4-30-76; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 4-2010(Temp), f. 6-29-10, cert. ef. 7-1-10 thru 12-28-10

257-010-0025

Access to and Use of Criminal Offender Information

(1) Access to OSP criminal offender information by any means shall be limited to:

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(a) Criminal Justice Agencies, where the information is to be used for the administration of criminal justice, Criminal Justice Agency employment, or the information is required to implement a federal or state statute, local ordinance, Executive Order, or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct, or other demonstrated and legitimate needs;

(b) Designated Agencies upon Executive Order of the Governor, where the information is required to implement a federal or state statute, Executive Order, or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct or for agency employment purposes, or licensing purposes, or other demonstrated and legitimate needs:

(A) When a Designated Agency requests criminal offender information about an individual from OSP under ORS 181.555(1) for agency employment, licensing or other permissible purposes, the agency shall provide documentation that the individual:

(i) Gave prior written consent for the agency to make a criminal offender record check through the OSP; or

(ii) Has received written notice from the agency that a criminal offender record check may be made through the OSP. Notice shall be provided prior to the time the request is made and shall include: Notice of the manner in which the individual may be informed of the procedures adopted under ORS 181.555(3) for challenging inaccurate criminal offender information; and notice of the manner in which the individual may become informed of rights, if any, under Title VII of the Civil Rights Act of 1964; and notice that discrimination by an employer on the basis of arrest records alone may violate federal civil rights law and that the individual may obtain further information by contacting the Bureau of Labor and Industries.

(B) When an authorized agency or organization requests, in written form, criminal offender information about an individual from OSP under ORS 181.555(1), that agency will be charged a fee of \$4 for each individual checked (fee does not apply when check is made by agency using their LEDS terminal).

(c) Qualified entities upon successful determination as being a qualified entity by the OSP Identification Services Section. Qualified entities may request from OSP Identification Services Section a criminal records check for purposes of evaluating the fitness of a subject individual as an employee, contractor or volunteer. The OSP Identification Services Section may access state and federal criminal records only through use of the subject individual's fingerprints.

(A) Before the OSP Identification Services Section conducts a criminal records check based on the subject individual's fingerprints:

(i) The OSP Identification Services Section shall determine whether the entity requesting the criminal records check is a qualified entity as defined in 257-010-0015(14) and has executed a user agreement making that determination;

(ii) The qualified entity must establish criteria to be used by the OSP Identification Services Section in reviewing the criminal offender information for a final record check determination;

(iii) The qualified entity must provide the criteria established under paragraph (ii) of this subsection to the OSP Identification Services Section; and

(iv) The qualified entity must have informed the subject individual that the qualified entity might request a fingerprint-based criminal records check and that the subject individual may obtain a copy of the record check report from, or challenge the accuracy or completeness of the record check report through, the OSP Identification Services Section or the Federal Bureau of Investigation.

(B) Upon receipt of a subject individual's criminal offender information, the OSP Identification Services Section shall make a final record check determination by comparing the criminal offender information with the criteria provided to the OSP Identification Services Section by the qualified entity under subsection (A)(ii) of this section. In making the final record check determination, the OSP Identification Services Section may only consider information that the Department of State Police may disclose under ORS 181.560. The OSP Identification Services Section may only consider records of any conviction, or of any arrest less than one year old on which there has been no acquittal or dismissal.

(C) The OSP Identification Services Section shall only respond to a qualified entity's inquiry concerning a subject individual in the following manner and shall not provide specific criminal offender information:

(i) Yes. (No disqualifying criteria established by the qualified entity and ORS 181.560 was found.)

(ii) No. (One or more disqualifying criteria established by the qualified entity and ORS 181.560 was found.)

(d) Regional Information Sharing Systems, where the information is to be used for the to identify, target, and remove criminal conspiracies and activities and terrorist conspiracies and activities that occur across law enforcement and state jurisdictional boundaries. Access to Oregon Criminal Offender Information by Regional Information Sharing Systems is limited to only Oregon Criminal Offender Information that exists in computerized format;

(e) A person or agency not defined as a Criminal Justice, Designated Agency, or Qualified Entity has access only through the OSP Identification Services Section pursuant to ORS 181.555 and 181.560. The request must be submitted in writing and may be hand carried or mailed to the OSP Identification Services Section. A fee of \$10 will be charged for each check. A fee of \$5 will be charged for each request for copy certification by a notary public in addition to any other applicable fee. Checks are to be made payable to the Oregon State Police. Inquiries are to be addressed to Oregon State Police, Identification Services Section, 3772 Portland Road N.E., Salem, OR 97303. Inquiries may also be made through the OSP webpage at www.osp.state.or.us, when a customer account is established for billing purposes.

(A) The requesting party must furnish OSP with sufficient information to assist identifying and notifying the individual of interest. If the information is sought for employment purposes the requester must state on the written request that the individual has been so advised and the manner in which the individual was so advised;

(B) These individuals will be advised by letter the name of the requestor, and that they are allowed to review their criminal history for inaccurate or incomplete information. They will also be advised that they may become informed of certain rights under Title VII of the Civil Rights Act of 1964 by contacting the Bureau of Labor and Industries;

(C) If a challenge is received prior to the end of the statutory 14 day waiting period, response to the requester will be held in abeyance until the challenge is resolved;

(D) OSP will respond to all requests and furnish Oregon conviction information and any arrest information less than one year old on which there has been no acquittal or dismissal. If the compiled information does not meet the above criteria or there is no record of the subject, OSP will reply to the requester that there is no criminal record.

(2) Access to Oregon CCH information by means of computer terminals shall be limited to Criminal Justice Agencies, Designated Agencies, and Regional Information Sharing Systems using their respective identification number (ORI) as authorized by OSP in an "Agency Agreement." Access to FBI criminal offender information by a Regional Information Sharing System is authorized, pursuant to an OSP "Agency Agreement," only upon a showing that the system is authorized under Title 28, United States Code, Section 534 and Title 28, Code of Federal Regulations, Part B & C, to receive such FBI criminal offender information.

(3) Oregon criminal offender information may be shared between authorized Criminal Justice and Designated Agencies, and between Regional Information Sharing Systems and their respective participating law enforcement agencies. All other secondary dissemination of criminal offender information is prohibited unless expressly permitted by Oregon Revised Statute. Dissemination of Oregon criminal offender information by the Department of Human Services or the Employment Department to public or private agencies authorized by ORS 181.537(1)(d) shall be limited to persons with a demonstrated and legitimate need to know the information. Such need must be demonstrated to the satisfaction of the Department of Human Services or the Employment Department responsible for the dissemination of the information. Title 28, United States Code, Section 534 and Title 28, Code of Federal Regulations, Section 20.33(b), prohibits dissemination of FBI criminal offender information to public or private agencies by Criminal Justice or Designated Agencies. Inquiries for nonofficial purposes or the checking of records for unauthorized persons or agencies is prohibited. A person wishing to review their criminal history record maintained by the FBI should write to: Federal Bureau of Investigation, CJIS Division, Attn: SCU, Module D2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306. The FBI will inform the person how to obtain a copy of their record and, if necessary, how to challenge the accuracy or completeness of that record.

(4) Criminal offender information may be furnished to authorized Criminal Justice, Designated Agency, and Regional Information Sharing System employees and no person who has been convicted of a crime which could have resulted in a sentence to a federal or state penitentiary will be allowed to operate a computer terminal accessing CCH information or have access to Criminal offender information. All authorized agency or system employees as described above must be fingerprinted and the fingerprint

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card submitted to OSP. The fingerprint cards will be searched against the state and federal criminal record files. The "Reason Fingerprinted" may be for criminal justice employment such as "Police Officer," "Corrections Officer" or "Access to CCH." These fingerprint cards will be retained by OSP and entered into the CCH File. Exceptions to this rule may be made in extraordinary circumstances upon written application to the Superintendent of the Oregon State Police setting forth such circumstances. The Superintendent of OSP will maintain a central file where such exception authorization shall be filed.

(5) Screening of Criminal Justice, Designated Agency, and Regional Information Sharing System employees who have access to CCH or criminal offender information records is the responsibility of the employing agency or system.

(6) Any Criminal Justice, Designated Agency, or Regional Information Sharing System that obtains[ing] Oregon or FBI criminal offender information, either directly through that agency's or system's computer terminal, through the computer terminal of another agency or system, or directly from OSP, must have executed a written "Agency Agreement" with the OSP prior to such access. Any public or private agency receiving Oregon criminal offender information from the Department of Human Services or the Employment Department pursuant to ORS 181.537(1)(c) or (d) must have executed a written "Agency Agreement" with the Department of Human Services or the Employment Department prior to receiving the information. Dissemination of Oregon criminal offender information received under authority of ORS 181.537(1)(d) by a public or private agency is strictly prohibited.

(7) Security of computer terminals. Any computer terminal with CCH accessing capability must be physically secure and placed in a location not available to unauthorized persons. Computer terminals must be so placed that unauthorized persons may not observe the content of messages transmitted or received on such computer terminal.

(8) Security of criminal offender information records. Any Criminal Justice, Designated Agency, Regional Information Sharing System, or private entity obtaining or receiving criminal offender information shall maintain those records in secure files, available only to authorized agency employees, until they are destroyed by burning, shredding or secure and confidential recycling and shall treat those records in such a manner that the record does not become public information in any later proceeding, except through court order or as otherwise provided by law.

(9) Radio Transmission. Any radio transmission of criminal offender information records shall be limited to essential details only, with information identifying individuals and offenses concealed insofar as possible. Plain text transmission of an entire (summary or full CCH) record is prohibited.

(10) Fee for relief from the bar of purchasing/possessing a firearm. When a person barred from possessing a firearm under ORS 166.250(1)(c)(A), (B), (D) or (E) or barred from purchasing a firearm under ORS 166.470 and is granted relief from the bar by a court under ORS 166.274, a fee of \$12 will be charged to enter and maintain this information in the CCH File as authorized under ORS 166.274(4)(c).

(11) Fee for conducting applicant and regulatory fingerprint based criminal record background check when fingerprint card is retained in the CCH File. A fee of \$27 will be charged to conduct a fingerprint based criminal record background check when the fingerprint card and related information is entered and maintained in the CCH File.

(12) Fee for conducting applicant and regulatory fingerprint based criminal record background check when fingerprint card is not retained in the CCH File. A fee of \$28 will be charged to conduct a fingerprint based criminal record background check when the fingerprint card and related information is returned to the contributor or destroyed by the ISS. This fee will be waived as provided in ORS 181.556(1) & (2).

(13) Fee for conducting applicant and regulatory fingerprint based criminal record background check for qualified entity based on criteria established by the qualified entity. A fee of \$52 will be charged to conduct a fingerprint based criminal record background check and fitness determination. The fingerprint card and results of the fitness determination will be returned to the contributor. This fee will be waived as provided in ORS 181.556(1) & (2).

(14) Agencies authorized by Oregon Revised Statute or federal law to submit fingerprint record checks to the FBI, Identification Division via OSP, are responsible to pay the prevailing user fee charged by the FBI for those fingerprint record checks in addition to the OSP user fee, except as otherwise provided by state or federal law.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 166.291, 166.412, 181.537, 181.555, 181.560(4), 183.310 - 183.550, 192.440 & 194.164

Stats. Implemented: ORS 166.291, 166.412 & 181.880
Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; DSP 1-1981, f. & ef. 5-1-81; DSP 3-1981, f. 10-30-81, ef. 11-1-81; DSP 1-1982, f. 3-12-82, ef. 3-15-82; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 1-1991, f. 5-17-91, cert. ef. 7-1-91; OSP 1-1992, f. 3-17-92, cert. ef. 3-18-92; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-1994, f. & cert. ef. 8-2-94; OSP 3-1996, f. 5-24-96, cert. ef. 7-1-96; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 1-2005(Temp), f. & cert. ef. 3-1-05 thru 8-27-05; OSP 3-2005, f. & cert. ef. 9-12-05; OSP 4-2010(Temp), f. 6-29-10, cert. ef. 7-1-10 thru 12-28-10

257-010-0045

Violation of Rules

(1) Willful violation of Oregon Revised Statute, Executive Order or published rules relating to the Oregon Criminal Offender Information System by any authorized agency, Regional Information Sharing System, or employee may result in immediate termination of such agency's authorization to receive such information from the Oregon and/or Federal Criminal Offender Information Systems.

(2) Reinstatement will be effected only upon demonstration by the agency or system that the cause of such violation has been corrected. Final determination as to the reinstatement of any agency or system so terminated will be the responsibility of the OSP.

Stat. Auth.: ORS 181.555, 181.560(4), 183.310 - 183.550 & 192.440

Stats. Implemented: ORS 166.291, 166.412 & 181.880

Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-2010(Temp), f. 6-29-10, cert. ef. 7-1-10 thru 12-28-10

257-010-0050

Rights of Appeal

A Criminal Justice, Designated Agency, Regional Information Sharing System, or employee desiring to appeal any action, order, or administrative ruling by the OSP may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act relating to contested cases and judicial review.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 181.555, 181.560(4), 183.310 - 183.550 & 192.440

Stats. Implemented: ORS 166.291, 166.412 & 181.880

Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-2010(Temp), f. 6-29-10, cert. ef. 7-1-10 thru 12-28-10

Rule Caption: Supervision or revocation of the right to apply or reapply for a letter of appointment.

Adm. Order No.: OSP 5-2010(Temp)

Filed with Sec. of State: 7-13-2010

Certified to be Effective: 7-14-10 thru 1-10-11

Notice Publication Date:

Rules Amended: 257-050-0050, 257-050-0155, 257-050-0157

Subject: Deletes the undefined term "owner" and inserts the word "principal" in its place. Defines "principal" to include an owner. Gives the department continuing jurisdiction over pending suspension or revocation proceedings by authorizing it to revoke or suspend the right to apply for a letter of appointment. Gives the department continuing jurisdiction over pending suspension or revocation proceedings by authorizing it to revoke or suspend the right to re-apply for a letter of appointment. The department's current administrative rules only allow it to suspend or revoke an existing letter of appointment of either a "qualified tow business" or any owner or employee of a "qualified tow business" that commits a violation of law chargeable as a violation or crime. "Owner" is not defined. Additionally, the department's current administrative rules only allows it to suspend or revoke a tow vehicle, tow equipment, or a "qualified tow business" that already has a letter of appointment from being on the department's non-preference tow program for a violation of law other than a law chargeable as a violation or a crime. The department's current administrative rules do not allow it suspend or revoke either the right of a tow business or its principals to apply for a letter of appointment, or the right of a "qualified tow business" or its principals to re-apply for a letter of appointment once that business' current letter of appointment expires. Under Oregon law, an administrative agency loses jurisdiction over a revocation proceeding once a license expires unless the agency's statutory authority provides otherwise. The department has administrative proceedings pending that involve the revocation or suspension of qualified tow businesses from its non-preference tow program. These rules give the department con-

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tinuing jurisdiction in those cases where the letter of appointment for a tow business, tow truck, “qualified tow business,” or principal or employee thereof, will expire prior to the department completing its administrative suspension or revocation action and issuing a final order. These rule changes are made retroactive to January 1, 2009.

Rules Coordinator: Cort Dokken—(503) 934-0228

257-050-0050

Definitions

(1) “Abandoned Auto” or “Abandoned Vehicle” – A vehicle, as defined in ORS 819.110, that has been parked or left standing upon any public way for a period in excess of 24 hours without authorization by statute or local ordinance.

(2) “Area Commander” or “Station Commander” – The local commanding officer of an area established by the Oregon State Police.

(3) “Business Records” – Those records maintained by a qualified tow business that relate to the non-preference tows and which include, but are not limited to, tow bills, letters of appointment, and inspection sheets.

(4) “Certified” or “Certification” – The successful completion by an employee of a tow business of a written test administered by a nationally recognized towing affiliated body/organization relating to the level of towing the employee operates.

(5) “Convicted” – An adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(6) “Denial” – Action taken by the Department in refusing to issue a letter of appointment to a tow business.

(7) “Department” – The Department of State Police, also referred to as “Oregon State Police,” and its employees.

(8) “Employee” – Any person in the service of a tow business under contract of hire, express or implied, oral or written, where the business has the power or right to control and direct the employee in the material details of how the work for the business is to be performed.

(9) “Fencing” – Permanent fencing meeting zoning requirements, with a minimum height of six (6) feet.

(10) “Hazardous Vehicle” – A vehicle, as defined in ORS 819.120, that is disabled, abandoned, parked, or left standing unattended on a road or highway right of way and that is in such a location as to constitute a hazard or obstruction to motor vehicle traffic using the road or highway given that term in OAR 734-020-0147.

(11) “Hearings Officer” – A person appointed by an agency or entity contracted by the Department of State Police to conduct contested case hearings.

(12) “Highway” – Every public way, road, street, thoroughfare and place including bridges, viaducts and other structures within the boundaries of the state open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right (ORS 801.305).

(13) “Inspector” – A commissioned officer or other appointed representative of the Oregon State Police who has been designated by the Department to examine tow trucks and qualified tow businesses.

(14) “Letter of Appointment” – A letter issued by the Department that authorizes a tow business to tow abandoned or disabled vehicles on a non-preference rotational basis for the Oregon State Police.

(15) “Non-Preference tow rotational List” or “Non-Preference List” – The list of qualified tow businesses maintained at Oregon State Police Headquarters that is used to dispatch the tow trucks on an equitable basis when no choice or preference to a tow business is stated by the vehicle owner, driver, or other person responsible for the vehicle.

(16) “On Road Time” – The time it takes a qualified tow business to have a tow truck started and on the road from the time the dispatcher was called by the Department.

(17) “Patrol Services Division” – The administrative body of the Oregon State Police that is located at General Headquarters in Salem, Oregon.

(18) “Place of Business” – A separate building or physical structure that a qualified tow business occupies, either continuously or at regular times, where the qualified tow business’ business books and records are kept and the business of towing vehicles is transacted in each assigned tow zone. Multiple or different qualified tow businesses may operate on a single piece of real property, provided that each qualified tow business maintains individual and separate records, storage facilities, and letters of appointment in order to be placed on the Department’s non-preference tow rotational list.

(19) “Principal” – an owner, partner, corporate officer or other person who controls or manages the business organization or employees or agents of the business organization.

(20) “Qualified Tow Business” is a tow business with a current letter of appointment issued by the Department.

(21) “Region Commander” or “District Commander” – The commanding officer of the region as established by the Oregon State Police.

(22) “Recovery Vehicle” – A motor vehicle that is:

(a) A commercially available truck chassis equipped with a commercially manufactured tow body or bed, that is rated and issued a serial number by the manufacturer;

(b) Designed and equipped for, and used in, the towing and/or recovery of vehicles;

(c) Capable of towing a vehicle by means of a tow bar, sling or wheel lift; and

(d) Capable of recovering a vehicle by means of a hoist, winch and towline.

(23) “Response Time” – The reasonable driving time it takes a tow truck to respond to the dispatched location once the tow truck is on the road.

(24) “Revocation” and “revoked” – The termination of a letter of appointment or right to apply for a letter of appointment, and the removal from the Oregon State Police’s non-preference towing program for a period of not less than 10 years, which becomes effective from the date of the Notice of Revocation from the Oregon State Police.

(25) “Right to apply” – The right of a tow business or its principal(s) to apply for, and the right of a qualified tow business or its principal(s) to re-apply for, a letter of appointment.

(26) “Suspension” and “suspend” – The temporary withdrawal of a letter of appointment or right to apply for a letter of appointment, and the removal from the Oregon State Police non-preference towing program for a period of not more than 10 years.

(27) “Tow business” – Any person, enterprise, corporation or partnership that engages in the impounding, transporting, recovery or storage of towed or abandoned vehicles or in the disposal of abandoned vehicles.

(28) “Tow Vehicle” – A motor vehicle that is:

(a) Altered or designed and equipped for, and used in, the business of towing vehicles; and

(b) Used to tow vehicles by means of a crane hoist, tow bar, towline or dolly, or otherwise used to render assistance to other vehicles (ORS 801.530).

(29) “Tow Zone” – The geographical area designated by the area commander for the removal of vehicles.

(30) “Vehicle Storage Area” – The approved yard or enclosed building where a qualified tow business keeps or stores towed vehicles.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-1999(Temp), f. & cert. ef. 9-10-99 thru 3-7-00; OSP 1-2000, f. & cert. ef. 3-15-00; OSP 2-2000(Temp), f. & cert. ef. 7-14-00 thru 1-9-01; Administrative correction 6-12-01; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10; OSP 5-2010(Temp), f. 7-13-10, cert. ef. 7-14-10 thru 1-10-11

257-050-0155

Suspension and Revocation (for Violation of a Law Chargeable as a Violation or Crime)

(1) The following suspension or revocation periods apply when a tow business, qualified tow business, or any principal or employee of a tow business or qualified tow business, has been convicted of a violation of law charged as a Violation or Crime:

(a) “First Suspension” – any first violation shall be for a period of not less than 60 days.

(b) “Second Suspension” – any second violation that is committed within a one (1) year period from the date of any final order under this rule shall be for a period of not less than one (1) year.

(c) “Third Suspension” – any third violation that is committed within a three (3) year period of the date of any final order under this rule shall be a revocation.

(2) The following constitute grounds for suspension:

(a) Commission of a violation or traffic crime of Oregon Law during the course and operation of the tow business’ or qualified tow business’ tow business.

(b) A principal or employee of a tow business or qualified tow business that commits any violation of Oregon Law while in the performance of his or her duties of employment.

(3) The following constitutes grounds for revocation:

(a) Commission of a crime, other than a traffic crime and that is chargeable as a misdemeanor or felony, by a tow business or qualified tow

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business during the course and operation of the tow business' or qualified tow business' tow business.

(b) A principal or employee of a tow business or qualified tow business that commits a crime chargeable as a misdemeanor or felony while in the performance of his or her duties of employment.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10; OSP 5-2010(Temp), f. 7-13-10, cert. ef. 7-14-10 thru 1-10-11

257-050-0157

Suspension or Revocation for Violation (other than a Law Chargeable as a Violation or Crime)

(1) Suspensions or revocations, unless otherwise outlined or defined in these rules, shall fall under one of the following four levels:

(a) Immediate suspension – A suspension that takes place immediately, upon written notice from the Oregon State Police, as evidenced by the date of the postmark, removing a tow vehicle, tow equipment, tow business, or a qualified tow business from the non-preference rotational tow list.

(b) Level one suspension – any first violation of these Administrative Rules unless otherwise defined in the rule and shall be for a period of not less than sixty (60) days, and not more than one (1) year in length.

(c) Level two suspension – any second violation of these Administrative Rules that is committed within a one (1) year period from the date of any final order and shall be for a period of not less than one (1) year and not more than two (2) years in length.

(d) Revocation – any third violation of these Administrative Rules that is committed within a three (3) year period of the date of any final order and shall result in a revocation.

(2) A suspension shall be in effect until the violation is corrected, or the Department orders reinstatement of a letter of appointment or right to apply for a letter of appointment.

Stat. Auth.: ORS 181.440
Stats. Implemented: ORS 181.440
Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10; OSP 5-2010(Temp), f. 7-13-10, cert. ef. 7-14-10 thru 1-10-11

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Updates regarding leaves from employment for criminal justice; discretionary crimes list for fire service professionals.

Adm. Order No.: DPSST 7-2010

Filed with Sec. of State: 7-15-2010

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Rules Amended: 259-008-0005, 259-008-0020, 259-008-0030, 259-008-0060, 259-008-0064, 259-008-0065, 259-008-0067, 259-008-0076, 259-009-0070

Subject: Amend definition and use of terms referring to leaves from employment, to conform to statutory provisions; include attempt, solicitation, and conspiracy to commit certain crimes as potentially disqualifying for fire service professionals.

Rules Coordinator: Marilyn Lorange—(503) 378-2427

259-008-0005

Definitions

(1) "Assistant Department Head" means an officer occupying the first position subordinate to a Department Head, and is primarily responsible for supervision of middle managers and/or supervisors.

(2) "Board" means the Board on Public Safety Standards and Training.

(3) "Casual employment" means employment that is occasional, irregular, or incidental and the employee does not receive seniority rights nor fringe benefits.

(4) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181.640.

(5) "Commissioned" means an authorization granting the power to perform various acts or duties of a police officer and acting under the super-

vision and responsibility of a county sheriff or as otherwise provided by law.

(6) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including but not limited to vocational or technical education programs or lower division collegiate programs.

(7) "Corrections Officer" means an officer or member of a law enforcement unit who is employed full-time thereby and is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; and any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.652.

(8) "Department" means the Department of Public Safety Standards and Training.

(9) "Department Head" means the chief of police, sheriff, or chief executive of a law enforcement unit or a public or private safety agency directly responsible for the administration of that unit.

(10) "Director" means the Director of the Department of Public Safety Standards and Training.

(11) "Educational Credits" are credits earned for studies satisfactorily completed at an accredited post-secondary education institution recognized under 259-008-0025.

(12) "Emergency medical dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(13) "First-Level Supervisor" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between the operational level and the middle manager position who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.

(14) "Full-time employment" means the employment of a person who has the responsibilities as defined in ORS 181.610(3), (5), (9), (13), (14), (18) of this rule, who has the responsibility for, and is paid to perform the duties described in the above statute and administrative rule for more than 80 hours per month for a period of more than 90 consecutive calendar days. For purposes of this rule, any employment that meets the definition of seasonal, casual, or temporary employment is not considered full-time employment as a public safety professional.

(15) "High School" is a school accredited as a high school by the Oregon Department of Education, or a school accredited as a high school by the recognized regional accrediting body, or a school accredited as a high school by the state university of the state in which the high school is located.

(16) "Law Enforcement Officers" as used throughout this manual collectively means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610, and 181.651.

(17)(a) "Law Enforcement Unit" means a police force or organization of the state, a city, port, school district, mass transit district, county, county service district authorized to provide enhanced law enforcement services under ORS 451.010, Indian reservation, Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, or common carrier railroad whose primary duty, as prescribed by law, ordinance, or directive, is any one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control, or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision, and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation.

(b) "Law enforcement unit" also means a police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area whose employees are commissioned by a county sheriff.

(18) "Leave" means:

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(a) a leave granted to a law enforcement officer from a law enforcement unit; or

(b) a leave granted to a telecommunicator or emergency medical dispatcher from a public or private safety agency.

(19) "Middle Manager" means a law enforcement officer, telecommunicator, or emergency medical dispatcher occupying a position between first level supervisor and department head position and is primarily responsible for management and/or command duties. A middle manager position does not include a position with limited, or acting middle management duties.

(20) "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties described in statutes and administrative rules for public safety personnel for 80 hours per month, or less, for a period of more than 90 consecutive calendar days.

(21) "Parole and Probation Officer" means

(a) Any officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers, or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(b) Any officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation.

(22) "Police Officer" means an officer or member of a law enforcement unit who is employed full-time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide enhanced law enforcement services under ORS 451.010, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, or the Governor, or a member of the Department of State Police who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security; and any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181.651.

(23) "Public or private safety agency" means any unit of state or local government, a special purpose district or a private firm which provides, or has authority to provide, police, ambulance or emergency medical services.

(24) "Public safety personnel" and "Public safety professional" include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, and telecommunicators.

(25) "Recall" means the administrative inactivation of a certificate issued by the Department until maintenance requirements are met and certification is restored.

(26) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public Safety Academy.

(27) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181.690, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses incurred while officers attend approved training courses certified by the Department.

(28) "Reserve Officer" means an officer or member of a law enforcement unit:

(a) Who is a volunteer or who is employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor or who is a member of the Department of State Police;

(b) Who is armed with a firearm; and

(c) Who is responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(29) "Seasonal employment" means employment that can be carried on only at certain seasons or fairly definite portions of the year, with defined starting and ending dates based on a seasonally determined need.

(30) "Staff" means those employees occupying full-time, part-time, and/or temporary positions with the Department.

(31) "Telecommunicator" means any person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 401.720.

(32) "Temporary employment" means employment that lasts no more than 90 consecutive calendar days and is not permanent.

(33) "The Act" refers to the Public Safety Standards and Training Act (ORS 181.610 to 181.715).

(34) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0010, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 3-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-2000, f. & cert. ef. 9-29-00; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10

259-008-0020

Personnel Action Reports

(1) All law enforcement units and public or private safety agencies must submit the name and other pertinent information concerning any newly appointed public safety professional to the Department on a Personnel Action Report (DPSST Form F-4) within ten (10) business days after employment.

(a) A Department (DPSST) number will be established for each newly appointed employee identified on a Personnel Action Report (DPSST Form F-4) if:

(A) The individual is employed in a certifiable position as a police officer, corrections officer, parole and probation officer, telecommunicator or emergency medical dispatcher;

(B) The individual is employed as a reserve police officer; or

(C) An individual's employer has submitted a written request identifying a demonstrated law enforcement need for an employee to obtain a DPSST number and the Department has approved the request. These positions may include, but are not limited to:

(i) A federal officer authorized by the Department to make arrests under ORS 133.245;

(ii) An individual who operates an Intoxilyzer or other law enforcement device for which a DPSST number is necessary; or

(iii) An individual who is required to file a police or other criminal justice report for which a DPSST number is necessary.

(b) No DPSST number will be assigned to an individual who has not been identified as a newly appointed public safety professional unless approved by the Department.

(2) Whenever public safety personnel resign, retire, or terminate employment, are promoted, demoted, discharged, deceased, are on a leave of 91 days or more, or transfer within a law enforcement unit, or private or public safety agency, the department head must report this information to the Department on a Personnel Action Report (DPSST Form F-4) within ten (10) business days of the action.

(3) All applicable sections of the Personnel Action Report (DPSST Form F-4) must be completed and signed by the department head or an authorized representative.

(4) All applicants shall furnish to the Department on a Personnel Action Report (DPSST Form F-4) their social security number. The social security number is used to accurately identify the applicant during computerized criminal history (CCH) and Department record checks and to verify information provided by public safety officers under the Act in connection with revocation proceedings.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 12, f. & ef. 12-19-77; Renumbered from 259-010-0050, PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0026, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 2-2001, f. & cert. ef. 2-8-01; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 6-2009, f. & cert. ef. 7-13-09; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10

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259-008-0030

Extension of the Time Limit for Course Completion

The Department may grant an extension of time limit for completion of any course required by OAR 259-008-0025 upon presentation of evidence by a law enforcement unit or public or private safety agency that a law enforcement officer, telecommunicator, or emergency medical dispatcher was unable to complete the required course within the time limit prescribed due to a leave or any reasonable cause as determined by the Department, except where such extensions are limited by ORS 181.652(2), 181.653(2), 181.665(2), and 181.644(2).

Stat. Auth.: ORS 181.644, 181.651, 181.653 & 181.665

Stats. Implemented: ORS 181.644, 181.651, 181.653 & 181.665

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0035, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10

259-008-0060

Public Safety Officer Certification

(1) Basic, Intermediate, Advanced, Supervisory, Management, Executive and Instructor 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 shall be acquired by all police 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 shall 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 shall 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 shall subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F11). Telecommunicators and emergency medical dispatchers shall subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics. (Form F-11T). [Form not included. See ED. NOTE.]

(7) Application for certification must be submitted on Form F7, with all applicable sections of the form completed. The form shall be signed by the applicant. In order to insure that the applicant does or does not meet 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 shall 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 shall be specified in writing and shall accompany the Application for Certification (Form F7). [Form not included. See ED. NOTE.]

(8) When a department head is the applicant, the above recommendation shall 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, for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate, shall have completed the designated education and training, combined with the prescribed corrections, parole and probation, police or telecommunications experience.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule shall equal one (1) education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule shall 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 Points. Twenty (20) classroom hours of job-related training approved by the Department shall equal one (1) training point. (Example: 200 training hours equal 10 training points.)

(a) Basic, Intermediate, Advanced, Supervisory, Middle Management, Executive, or Specialized courses certified, sponsored, or presented by the Department shall be approved.

(b) The Department may award training points for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records shall 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 shall include the subject, date, and classroom hours, and shall be certified true copies of the original.

(d) Upon receipt of documentation which shall include the source, syllabus, number of hours, dates and successful completion of the course, the Department or its designated staff may award training points for correspondence courses.

(e) College credits earned may be counted for either training points or education credits, whichever is to the advantage of the applicant.

(f) College credit awarded based on training completed may be applied toward either training points 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(s).

(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.

(g) Notwithstanding subsection (e) and (f) above, no credit can be applied toward both an education credit and training point when originating from the same training event.

(11) Experience/Employment:

(a) Experience acquired 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 cease to 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."

(C) Notwithstanding section (B) of this rule, a public safety professional 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.

(D) From the date a public safety professional's certification is recalled until it is reinstated by the Department;

(E) When a public safety professional fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety professional;

(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, emergency medical dispatcher as defined in OAR 259-008-0005(12) and (32) respectively, or part time parole and probation officer, as defined under 259-008-0005(20) and (21) and 259-008-0066, shall 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.

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(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 shall 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 shall 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.

(c) Applicants shall have valid first aid and cardiopulmonary resuscitation (CPR) card(s).

(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 shall possess a Basic Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points 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: [Table not included. See ED. NOTE.]

(14) 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 shall possess or be eligible to possess the Intermediate Certificate in the field in which certification is requested.

(b) Applicants shall have acquired the following combinations of education and training points 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: [Table not included. See ED. NOTE.]

(15) 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 shall possess or be eligible to possess the Advanced Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 45 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Supervision Course or an equivalent number of hours of Department approved supervisory level training within five (5) years prior to application for the Supervisory Certificate.

(d) Applicants shall be presently employed in, or have satisfactorily performed the duties associated with the position of a first level supervisor, as defined in ORS 181.610 and OAR 259-008-0005(16), 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 shall 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.

(16) 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 shall possess or be eligible to possess the Supervisory Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed the prescribed Middle Management Course or an equivalent number of hours of Department approved management level training within five (5) years prior to application for the Management Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a Department Head as defined in ORS 181.610 and 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.

(17) 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 shall possess or be eligible to possess the Management Certificate in the field in which certification is requested.

(b) Applicants shall have satisfactorily completed no less than 90 education credits as defined in section (10) of this rule.

(c) Applicants shall have satisfactorily completed 100 hours of Department approved executive level training within five (5) years prior to application for the Executive Certificate.

(d) Applicants shall be presently employed in, and shall have served satisfactorily in a Middle Management position, as an Assistant Department Head, or as a 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.

(18) 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, 259-008-0025, 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 meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the EMD 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 EMD certification; a minimum of four (4) hours of training, specific to the EMD 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 rule.

(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 an F-6 Course Roster, required maintenance training must be submitted to the Department by June 30th of each year. Training reported on an 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 an F-6 Course Roster.

(h) On or after July 1 of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records and provide notification to the individual and his/her employing agency.

(i) Within 30 days of receipt of the notification in (h) above, the agency or individual must:

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(A) Notify the Department of the training status of any law enforcement officer identified as deficient in submitting a Form F-15M or F-15T to the Department; and

(B) Submit an F-15M, or F-15T if multi-discipline includes certification as a telecommunicator or emergency medical dispatcher, identifying the maintenance training completed during the previous one (1) year reporting period.

(C) Maintenance training hours reported to the Department on an F-15M or F-15T will be used solely to verify completion of maintenance training requirements and will not be added to an officer's DPSST training record.

(j) Failure to notify the Department of completion of any required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.

(k) The Department will recall a law enforcement officer's certification for:

(A) Failure to complete or report any required maintenance training identified in section (c) above on or before June 30th of each year; or

(B) Failure to submit a Form F-15M or F-15T within 30 days after a warning notification letter has been sent.

(l) A law enforcement officer with a recalled certification is prohibited from being employed in any position that has been recalled.

(m) Upon documentation of compliance with subsection (i) of this rule, a law enforcement officer may reapply for single or multi-discipline certification as outlined by this rule.

(19) Certificates Are Property of Department. Certificates and awards are the property of the Department, and the Department shall have the power to revoke or recall 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

259-008-0064

Maintenance of Certification for Telecommunicators and Emergency Medical Dispatchers

(1) Basic Certification:

(a) All certified telecommunicators must complete 12 hours of maintenance training annually, regardless of whether they are employed as a telecommunicator.

(b) All certified emergency medical dispatchers must complete four (4) hours of maintenance training annually, regardless of whether they are employed as an emergency medical dispatcher.

(c) The maintenance training cycle begins on July 1st each year and ends on June 30th the following year.

(2)(a) The employing agency must maintain documentation of all required telecommunicator or emergency medical dispatcher maintenance training completed;

(b) An individual who is certified as a telecommunicator or emergency medical dispatcher, but is no longer employed in a certifiable position, is responsible for meeting all maintenance training requirements and maintaining documentation of any maintenance training completed.

(3)(a) If reported on an F-6 Course Roster, required maintenance training must be submitted to the Department by June 30th of each year. Training reported on an F-6 will result in credit for training hours. No training hours will be added to an individual's record, unless accompanied by an F-6 Course Roster.

(b) On or after July 1 of each year, the Department will identify all telecommunicators and emergency medical dispatchers who are deficient in maintenance training according to Department records and provide notification to the individual and his/her employing agency.

(c) Within 30 days of receipt of the notification in (3)(b) above, the agency or individual must notify the Department of the training status of any telecommunicator or emergency medical dispatcher identified as deficient by submitting a Form F-16 to the Department identifying the maintenance training completed during the previous one (1) year reporting period.

(d) Maintenance training hours reported to the Department on an F-16 will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(4) Failure to notify the Department of completion of the required training for individuals with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.

(5) The Department will recall a telecommunicator's or emergency medical dispatcher's certification for:

(a) Failure to complete or report any required maintenance training identified in sections (1) or (2) above on or before June 30th of each year; or

(b) Failure to submit a Form F-16 within 30 days after a warning notification letter has been sent.

(6) A telecommunicator or emergency medical dispatcher with a recalled certification is prohibited from being employed in a certifiable position as a telecommunicator or emergency medical dispatcher.

(7)(a) Instructors may apply hours spent instructing a class one (1) time annually toward maintenance training, but instructed hours reported for a class may not exceed the lesser of:

(A) The actual class hours; or

(B) The actual number of hours the instructor spent instructing the class.

(b) The total number of instructed hours applied towards the annual maintenance training requirement may not exceed:

(A) Six (6) hours for a telecommunicator; or

(B) Two (2) hours for an emergency medical dispatcher;

(8) Recertification following a recall may be obtained at the approval of DPSST by submitting the following to DPSST:

(a) A written request from the employing agency head, or individual if unemployed, requesting recertification, along with a justification of why the maintenance training was not completed; and

(b) Verification that the missed training was completed.

(9) Notwithstanding paragraph (6) of this subsection, the failure of a telecommunicator or Emergency Medical Dispatcher to complete required maintenance training will not result in recall of certification if the telecommunicator or Emergency Medical Dispatcher is on leave from a public or private safety agency;

(10) The Department may grant an extension of time for completion of any required training or in-service training based upon good cause. A written request for an extension of time must be submitted to the Department by the agency head.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181.640 & 181.644

Stats. Implemented: ORS 181.640 & 181.644

Hist.: PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 5-2001, f. & cert. ef. 8-22-01; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 15-2008, f. & cert. ef. 10-15-08; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10

259-008-0065

Maintenance of Certification For Active Police Officers

(1)(a) The Board is responsible for setting the standards for active police officer training and the maintenance of certification. The Department is required to uphold those standards, while each agency determines what training will be provided to meet the standards.

(b) It is recommended that agencies provide training time and training opportunities to enable the active police officer to meet the required maintenance training hours.

(2) In order to maintain certification:

(a) All active police officers must maintain current First Aid/CPR certification.

(b) Proof of First Aid/CPR certification renewal must be reported to the Department once every three years as part of each officer's mandatory maintenance training cycle. Proof includes submission of the following:

(A) An F-6 Course Roster received by the Department prior to the end of an officer's maintenance reporting period that verifies completion of training and identifies certification expiration dates. This will result in credit for training hours and update of the officer's First Aid/CPR certification expiration dates; or

(B) A photocopy of the front and back of an officer's current First Aid/CPR certification card prior to the end of the maintenance period. This will result in an update of the officer's First Aid/CPR expiration dates only. No training hours will be added to the officer's record, unless accompanied by an F-6 Course Roster; or

(C) An F-15 Maintenance-Police form identifying new expiration dates. The F-15 Maintenance-Police form must be submitted in accordance

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with subsection (5) of this section, following the end of the officer's maintenance period.

(c) All active police officers must complete a total of at least eighty-four (84) hours of agency approved training every three (3) years. The eighty-four (84) hours will include:

(A)(i) Eight (8) CORE hours of training annually, from either the "Firearms" or "Use of Force" subject areas:

(ii) This training must be reported to the Department as twenty-four (24) hours of CORE training, once every three years.

(B)(i) Active police officers who hold a Supervision, Mid-Management or Executive certification, must complete at least twenty-four (24) hours of agency approved Leadership/Professional training, every three years:

(ii) This training must be reported to the Department as twenty-four (24) hours of agency approved Leadership/Professional training, once every three (3) years.

(C)(i) In addition to the CORE (A)(i) (required of all officers) and Leadership/Professional (B)(i) training hours (only required of officers with Supervision Certification and above), the remaining hours must be completed from the category of "General Law Enforcement" training in the recommended, but not limited to, subject areas of Law and Legal, Ethics and Communication, Investigations, Survival Skills, Child Abuse, Sex Abuse, and Elder Abuse:

(ii) These remaining training hours must be reported to the Department as "General Law Enforcement" training, once every three (3) years.

(3) Beginning on the date a police officer returns to work from any leave of absence, the following requirements must be met:

(a) Maintenance Training Requirements as described in section (7) or (8) of this section;

(b) Proof of current First Aid and CPR cards;

(c) Any other applicable requirement for employment, training or certification as specified in OAR 259-008-0010, 259-008-0025 or 259-008-0060.

(4) Documentation of Maintenance Training:

(a) The employing agency must maintain documentation of required training and First Aid/CPR certification on each police officer;

(b) Any training submitted to the Department on an F-6 Course Roster will be entered into each officer's DPSST training record.

(c) Maintenance training submitted on an F-6 will be credited towards the number of hours required for each maintenance training category in section (2) above.

(5)(a) On or after January 2 of each year, the Department will identify all police officers who are deficient in maintenance training or First Aid/CPR certification according to Department records and provide notification to the officer and his/her employing agency.

(b) Within 30 days of receipt of the notification in (d) above, the agency must notify the Department of the training status or First Aid/CPR certification of all police officers identified as deficient by submitting a Form F-15M-Police to the Department, identifying the training or First Aid/CPR certification completed during the previous three (3) year reporting period.

(A) Maintenance training and First Aid/CPR training hours reported to the Department on an F-15M-Police will be used solely to verify completion of maintenance training requirements and will not be added to the officer's DPSST training record.

(B) Failure to notify the Department of completion of the required training for officers with identified training deficiencies will result in a notification of recall letter being sent to the agency head and the officer.

(6) The Department will recall a police officer's certification for:

(a) Failure to complete any required maintenance training or maintain First Aid/CPR certification during the maintenance period identified in section (2); or

(b) Failure to submit the completed Form F-15M-Police, within 30 days after a warning notification letter has been sent.

(7) A police officer with a recalled certification may not work in a certified position.

(8) Recertification following a recall:

(a) Recertification following a recall may be obtained at the approval of the Department by submitting the following:

(A) A written request for re-certification from the employing agency head, along with an explanation of why the training or First Aid/CPR certification was not obtained;

(B) An F-6 Course Roster verifying that any missed training has been completed, and identifying the training as "Maintenance make-up" training; and

(C) Verification of current First Aid/CPR certification, submitted as provided in subsection (2) (b) of this rule.

(b) After 2-1/2 years in a recalled status the police officer will be required to complete a Career Officer Development Course before s/he can be recertified.

(c) After more than 5 years in a recalled status the police officer will be required to complete basic training in the appropriate discipline.

(9) Agency heads of the employing agency may document "leave" in extreme circumstances for not completing the annual requirements but must provide documentation as to the reason and indicate when the missed training was completed.

(10) Maintenance Training Requirements for Police Officers on Leave.

(a) A police officer who is on leave for any period between 90 to 180 days will have the same maintenance training deadline as the date established prior to the officer's leave date.

(b) A police officer who is on leave for more than 180 days, but less than one year, will receive a one year extension from the maintenance training deadline established prior to the officer's leave.

(c) A police officer who is on leave for more than one year will receive an extension of the maintenance training deadline established prior to the officer's leave. The extension will be prorated, based on the duration of the officer's leave. Upon the officer's return to work, the officer must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(A) Qualification with the appropriate duty weapon(s); and

(B) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

(d) Failure to meet the requirements of subsection (c) of this section will result in a warning notification or recall of a police officer's certification as described in subsection (4) or (5) of this section.

(11) Maintenance Training Requirements for Previously Certified Police Officers. Any police officer who has not been employed as a police officer for between one year and five years must complete the mandatory eight hours of annual firearms/use of force maintenance training within 30 days of the officer's return to work, as follows:

(a) Qualification with the appropriate duty weapon(s); and

(b) Completion of sufficient additional firearms and use of force refresher training to total eight hours.

Stat. Auth.: ORS 181.652, 181.653 & 181.667

Stats. Implemented: ORS 181.652, 181.653 & 181.667

Hist.: PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 22-2002, f. & cert. ef. 11-18-02; BPSST 9-2003, f. & cert. ef. 4-22-03; DPSST 11-2006(Temp), f. & cert. ef. 8-15-06 thru 2-1-07; DPSST 13-2006, f. & cert. ef. 10-13-06; DPSST 3-2007, f. & cert. ef. 1-12-06; DPSST 3-2009, f. & cert. ef. 4-8-09; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10

259-008-0067

Lapsed Certification

(1)(a) The certification of any police officer, corrections officer, parole and probation officer who does serve as a police officer, corrections officer, parole and probation officer, or any certified reserve officer who is not utilized as a certified reserve officer, for any period of time in excess of three consecutive months is lapsed. Upon reemployment as a police officer, corrections officer, parole and probation officer, or recommencing service as a reserve officer, the person whose certification has lapsed may apply for certification in the manner provided in ORS 181.610 to 181.712.

(b) Notwithstanding paragraph (a) of this subsection, the certification of a police officer, corrections officer, parole and probation officer or certified reserve officer does not lapse if the officer is on leave from a law enforcement unit.

(2) The certification of any telecommunicator or emergency medical dispatcher who is not utilized as a telecommunicator or emergency medical dispatcher for any period of time in excess of 12 consecutive months, unless the telecommunicator or emergency medical dispatcher is on leave from a public or private safety agency, is lapsed. Upon reemployment as a telecommunicator or emergency medical dispatcher, the person whose certification has lapsed may apply for certification in the manner provided in ORS 181.610 to 181.712.

Stat. Auth.: ORS 181.652, 181.653 & 181.667

Stats. Implemented: ORS 181.652, 181.653 & 181.667

Hist.: BPSST 9-2003, f. & cert. ef. 4-22-03; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10

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259-008-0076

Eligibility Requirements for Police Chief

(1) In addition to the minimum standards for employment and training as a law enforcement officer as described in OAR 259-008-0010 and 259-008-0025, a person accepting employment as a Police Chief must:

(a) Be currently certified as a police officer by the Department; or

(b) If the person is not currently certified as a police officer by the Department, the person accepting employment as Police Chief must obtain certification no later than 18 months after accepting such employment.

(2) Any person accepting employment as Police Chief must obtain Management certification by the Department within two (2) years of accepting employment as Police Chief, unless an extension is requested in writing and granted by the Department.

(3) The Department may grant an extension of time to obtain a Management certificate upon presentation of evidence by a law enforcement unit that a Police Chief was unable to obtain the certification within the required time limit due to being on leave, or any other reasonable cause as determined by the Department. No extension will be granted beyond one year.

(4) The employing agency must maintain documentation of a Police Chief's qualifications.

(5) The employing agency must notify the Department within 10 days of the date that a Police Chief is appointed, resigns, retires, terminates employment, is discharged, deceased, is on leave, or transfers within a law enforcement unit, or private or public safety agency as required by OAR 259-008-0020.

(6) Failure to obtain a Management Certificate as required in section (2) or (3) above, will result in the immediate recall of the Police Chief's certification:

(a) A Police Chief with a recalled certification is prohibited from performing the duties of, or working in any capacity as, a Police Chief or Acting Police Chief;

(b) Prior to recertification of a Police Chief's recalled certificate, the employing agency head must submit the following:

(A) A written request for recertification, along with an explanation of the individual's current job duties and why the Department should recertify the individual if they are not currently in a certifiable police officer position; or

(B) Verification that a Management Certificate was obtained, if the individual is requesting reinstatement as a Police Chief.

(c) A police chief whose certification has been recalled pursuant to this rule must submit a completed F-4 (Personnel Action Form) identifying that the individual is no longer serving as, or performing the duties of, police chief prior to reactivating their police certification;

(d) A Police Chief who fails to recertify within 2-1/2 years is subject to the provisions of OAR 259-008-0025(2);

(e) A Police Chief who fails to recertify within five (5) years is subject to the provisions of OAR 259-008-0025(1)(c).

Stat. Auth.: ORS 181.640, 181.665

Stats. Implemented: ORS 181.640, 181.665

Hist.: DPSST 13-2005, f. & cert. ef. 12-7-05; DPSST 9-2007, f. & cert. ef. 8-15-07; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10

259-009-0070

Denial/Revocation

(1) It is the responsibility of the Board to set the standards, and of the Department to uphold them, to insure 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 or respect of the profession is compromised.

(2) For purposes of this rule, the following definitions will apply:

(a) "Denial" or "Deny" means the refusal to grant a fire service certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (9) of this rule.

(b) "Discretionary Conviction" means a conviction identified in OAR 259-009-0070(6).

(c) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-009-0070(4).

(d) "Revocation" or "Revoke" means to withdraw the certification of a fire service professional or instructor for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in subsection (9) of this rule.

Grounds for Mandatory Denial or Revocation of Certification.

(3) Mandatory Grounds for Denying or Revoking Certification of a Fire Service Professional or Instructor:

(a) The Department must deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing if requested, based upon a finding that:

(A) The fire service professional or instructor has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state would constitute a crime listed in 137.700. Those crimes are:

163.095 Attempted Aggravated Murder;

163.115 Attempted Murder;

163.115 Murder;

163.118 Manslaughter in the First Degree;

163.125 Manslaughter in the Second Degree;

163.149 Aggravated Vehicular Homicide;

163.175 Assault in the Second Degree;

163.185 Assault in the First Degree;

163.225 Kidnapping in the Second Degree;

163.235 Kidnapping in the First Degree;

163.365 Rape in the Second Degree;

163.375 Rape in the First Degree;

163.395 Sodomy in the Second Degree;

163.405 Sodomy in the First Degree;

163.408 Sexual Penetration in the Second Degree;

163.411 Sexual Penetration in the First Degree;

163.427 Sexual Abuse in the First Degree;

163.670 Using a Child in a Display of Sexually Explicit Conduct

164.325 Arson in the First Degree (See exception under OAR 259-009-0070(4));

164.405 Robbery in the Second Degree;

164.415 Robbery in the First Degree;

167.017 Compelling Prostitution.

(B) The fire service professional or instructor has been discharged for cause from employment as a fire service professional or instructor.

(b) 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 the Department of a Notice of Intent to Deny or Revoke Certifications (NOI), the fire service professional or instructor provides notice to the Department within the time stated in the NOI that the discharge has not become final, then the Department 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 fire service professional or instructor would observe in a similar circumstance;

(iv) Incompetence: means a demonstrated lack of ability to perform the essential tasks of a fire service professional or instructor that remedial measures have been unable to correct.

(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.

Discretionary Disqualifying Misconduct as Grounds for Denying or Revoking Certification.

(4) Discretionary disqualifying misconduct as Grounds for Denying or Revoking Certification(s) of a Fire Service Professional or Instructor:

(a) The Department may deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(A) The fire service professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(B) The fire service professional or instructor has been convicted of an offense listed in subsection (4)(c), punishable as a crime, other than a mandatory disqualifying crime listed in section (3) of this rule, in this state or any other jurisdiction.

(b) For purposes of this rule, the Department, through the Fire Policy Committee and Board, has defined core values that are integral to the fire service profession. These values are:

(A) Category I: Honesty. Honesty includes fairness and straightforwardness of conduct; integrity, adherence to the facts; freedom from subterfuge or duplicity; truthfulness and sincerity.

(B) Category II: Professionalism. Professionalism includes the conduct, aims, or qualities that characterize or mark a profession or a professional person; extreme competence in an occupation or pursuit.

(C) Category III: Justice. Justice includes just treatment, the quality or characteristics of being just, impartial, or fair; integrity and honesty.

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(c) Pursuant to ORS 181.662(3)(b), the Department has determined that, in the absence of a determination to the contrary by the Fire Policy Committee and Board, a Fire Service Professional or Instructor who has been convicted of the following crimes has violated the core values of the fire service profession and may not be fit to receive or hold certification:

162.015 (Bribe Giving) – Category III;
162.025 (Bribe Receiving) – Category III;
162.065 (Perjury) – Category I;
162.117 (Public Investment Fraud) – Category I;
162.155 (Escape in the Second Degree) – Category II;
162.165 (Escape in the First Degree) – Category II;
162.185 (Supplying Contraband) – Category II;
162.205 (Failure to Appear in the First Degree) – Category II;
162.265 (Bribing a Witness) – Category III;
162.275 (Bribe Receiving by a Witness) – Category III;
162.285 (Tampering with a Witness) – Category III;
162.305 (Tampering with Public Records) – Category III;
162.325 (Hindering Prosecution) – Category III;
162.355 (Simulating Legal Process) – Category III;
162.365 (Criminal Impersonation) – Category I;
162.367 (Criminal Impersonation of a Peace Officer) – Category I;
162.415 (Official Misconduct in the First Degree) – Category II;
163.145 (Criminally Negligent Homicide) – Category III;
163.160 (Assault in the Fourth Degree) – Category III;
163.165 (Assault in the Third Degree) – Category III;
163.205 (Criminal Mistreatment in the First Degree) – Category III;
163.207 (Female Genital Mutilation) – Category III;
163.208 (Assaulting a Public Safety Officer) – Category III;
163.213 (Unlawful Use of an Electrical Stun Gun, Tear Gas or Mace in the First Degree) – Category II;
163.245 (Custodial Interference in the Second Degree) – Category III;
163.257 (Custodial Interference in the First Degree) – Category III;
163.275 (Coercion) – Category III;
163.355 (Rape in the Third Degree) – Category III;
163.425 (Sexual Abuse in the Second Degree) – Category III;
163.465 (Public Indecency) – Category III;
163.515 (Bigamy) – Category III;
163.525 (Incest) – Category III;
163.535 (Abandonment of a Child) – Category III;
163.537 (Buying or Selling a Person Under 18 years of age) – Category III;
163.547 (Child Neglect in the First Degree) – Category III;
163.555 (Criminal Non-Support) – Category III;
163.670 (Using Child in Display of Sexually Explicit Conduct) – Category III;
163.684 (Encouraging Child Sexual Abuse in the First Degree) – Category III;
163.686 (Encouraging Child Sexual Abuse in the Second Degree) – Category III;
163.688 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) – Category III;
163.689 (Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree) – Category III;
163.732 (Stalking) – Category III;
163.750 (Violating Court's Stalking Protective Order) – Category III;
164.045 (Theft in the Second Degree) – Category I;
164.055 (Theft in the First Degree) – Category I;
164.057 (Aggravated Theft in the First Degree) – Category I;
164.075 (Theft by Extortion) – Category I;
164.125 (Theft of Services: by Deception) – Category I;
164.135 (Unauthorized Use of a Vehicle) – Category I;
164.140 (Criminal Possession of Rented or Leased Personal Property: felony only) – Category I;
164.170 (Laundering a Monetary Instrument) – Category I;
164.172 (Engaging in a Financial Transaction in Property Derived from Unlawful Activity) – Category I;
164.215 (Burglary in the Second Degree) – Category III;
164.225 (Burglary in the First Degree) – Category III;
164.235 (Possession of a Burglary Tool or Theft Device) – Category III;
164.315 (Arson in the Second Degree) – Category II;
164.325 (Arson in the First Degree – If not a conviction under ORS 137.700) – Category II;
164.365 (Criminal Mischief in the First Degree) – Category III;
164.377 (Computer Crime) – Category III;
164.395 (Robbery in the Third Degree) – Category III;
164.868 (Unlawful Labeling of a Sound Recording) – Category III;
164.869 (Unlawful Recording of a Live Performance) – Category III;
164.872 (Unlawful Labeling of a Videotape Recording) – Category III;
164.885 (Endangering Aircraft) – Category II;
164.889 (Interference with Agricultural Research) – Category III;
165.013 (Forgery in the First Degree) – Category I;
165.022 (Criminal Possession of a Forged Instrument in the First Degree) – Category I;
165.032 (Criminal Possession of a Forgery Device) – Category I;
165.055 (Fraudulent Use of a Credit Card: Felony Only) – Category I;
165.065 (Negotiating a Bad Check) – Category I;
165.070 (Possessing Fraudulent Communications Device) – Category I;
165.074 (Unlawful Factoring of Payment Card Transaction) – Category I;
165.085 (Sports Bribery) – Category III;
165.090 (Sports Bribe Receiving) – Category III;
165.579 (Cellular Counterfeiting in the Second Degree) – Category III;
165.581 (Cellular Counterfeiting in the First Degree) – Category III;
165.692 (Making False Claim for Health Care Payment) – Category I;
165.800 (Identity Theft) – Category I;
165.810 (Unlawful Possession of a Personal Identification Device) – Category I;
165.813 (Unlawful Possession of Fictitious Identification) – Category I;
166.005 (Treason) – Category II;
166.015 (Riot) – Category II;
166.085 (Abuse of Corpse in the Second Degree) – Category II;
166.087 (Abuse of Corpse in the First Degree) – Category II;

166.155 (Intimidation in the Second Degree) – Category III;
166.165 (Intimidation in the First Degree) – Category III;
166.220 (Unlawful Use of Weapon) – Category I;
166.270 (Possession of Weapons by Certain Felons: Felony only) – Category II;
166.275 (Possession of Weapons by Inmates of Institutions) – Category II;
166.370 (Possession of Firearm or Dangerous Weapon in Public Building or Court Facility; Exceptions; Discharging Firearm at School) – Category II;
166.382 (Possession of Destructive Device Prohibited) – Category II;
166.384 (Unlawful Manufacture of Destructive Device) – Category II;
166.429 (Firearms Used in Felony) – Category II;
166.438 (Transfer of Firearms at Gun Shows: Felony Only) – Category II;
166.450 (Obliteration or Change of Identification Number on Firearms) – Category II;
166.642 (Felon in Possession of Body Armor) – Category II;
166.643 (Unlawful Possession of Body Armor) – Category II;
166.649 (Throwing an Object Off an Overpass in the Second Degree) – Category III;
166.651 (Throwing an Object Off an Overpass in the First Degree) – Category III;
166.660 (Unlawful Paramilitary Activity) – Category III;
166.720 (Racketeering Activity Unlawful) – Category II;
167.012 (Promoting Prostitution) – Category III;
167.062 (Sadomasochistic Abuse or Sexual Conduct in Live Show: Felony Only) – Category III;
167.164 (Possession of Gray Machine) – Category I;
167.212 (Tampering with Drug Records) – Category I;
167.262 (Adult Using Minor in Commission of Controlled Substance Offense: Felony Only) – Category III;
167.322 (Aggravated Animal Abuse in the First Degree) – Category III;
167.339 (Assaulting Law Enforcement Animal) – Category III;
475.840 (Prohibited Acts Generally: Manufacture or Deliver a Controlled Substance) – Category II;
475.846 (Unlawful Manufacture of Heroin) – Category II;
475.848 (Unlawful Manufacture of Heroin Within 1,000 Feet of School) – Category III;
475.850 (Unlawful Delivery of Heroin) – Category II;
475.852 (Unlawful Delivery of Heroin Within 1,000 Feet of School) – Category III;
475.854 (Unlawful Possession of Heroin) – Category II;
475.856 (Unlawful Manufacture of Marijuana) – Category II;
475.858 (Unlawful Manufacture of Marijuana Within 1,000 Feet of School) – Category III;
475.860 (Unlawful Delivery of Marijuana: Felony only) – Category II;
475.862 (Unlawful Delivery of Marijuana Within 1,000 Feet of School) – Category III;
475.864 (Unlawful Possession of Marijuana: Felony only) – Category II;
475.866 (Unlawful Manufacture of 3,4-Methylenedioxyamphetamine (Ecstasy)) – Category II;
475.868 (Unlawful Manufacture of 3,4-Methylenedioxyamphetamine (Ecstasy) Within 1,000 Feet of School) – Category III;
475.870 (Unlawful Delivery of 3,4-Methylenedioxyamphetamine (Ecstasy)) – Category II;
475.872 (Unlawful Delivery of 3,4-Methylenedioxyamphetamine (Ecstasy) Within 1,000 Feet of School) – Category II;
475.874 (Unlawful Possession of 3,4-Methylenedioxyamphetamine (Ecstasy)) – Category II;
475.876 (Unlawful Manufacture of Cocaine) – Category II;
475.878 (Unlawful Manufacture of Cocaine Within 1,000 Feet of School) – Category III;
475.880 (Unlawful Delivery of Cocaine) – Category II;
475.882 (Unlawful Delivery of Cocaine Within 1,000 Feet of School) – Category III;
475.884 (Unlawful Possession of Cocaine) – Category II;
475.886 (Unlawful Manufacture of Methamphetamine) – Category II;
475.888 (Unlawful Manufacture of Methamphetamine Within 1,000 Feet of School) – Category III;
475.890 (Unlawful Delivery of Methamphetamine) – Category II;
475.892 (Unlawful Delivery of Methamphetamine Within 1,000 Feet of School) – Category III;
475.894 (Unlawful Possession of Methamphetamine) – Category II;
475.904 (Unlawful Manufacture or Delivery of Controlled Substance Within 1,000 Feet of School) – Category III;
475.908 (Causing Another Person to Ingest a Controlled Substance) – Category III;
475.910 (Application of Controlled Substance to the Body of Another Person) – Category III;
475.914 (Prohibited Acts for Registrants: Deliver or Dispense Controlled Substance) – Category II;
475.962 (Distribution of Equipment, Solvent, Reagent or Precursor Substance with Intent to Facilitate Manufacture of Controlled Substances) – Category II;
475.967 (Possession of Precursor Substance With Intent to Manufacture Controlled Substance) – Category II;
475.977 (Possessing or Disposing of Methamphetamine Manufacturing Waste) – Category II;
811.182 (Criminal Driving While Suspended or Revoked) – Category II;
811.540 (Fleeing or Attempting to Elude Police Officer: Felony Only) – Category II;
811.705 (Failure to Perform Duties of a Driver to Person Injured) – Category II;
813.010 (DUI: Felony Only) – Category II.

Any crime that requires the fire service professional or instructor to register as a sex offender.

“Attempt,” “Solicitation,” or “Conspiracy” to commit a crime listed in ORS 137.700 or in any other jurisdiction that, if committed in this state would constitute an attempt, solicitation, or conspiracy to commit a crime listed in 137.700 (and identified in OAR 259-009-0070(3)).

Conviction of felony or Class A misdemeanor “Attempt,” “Solicitation” or “Conspiracy” to commit a crime identified in this rule as a discretionary disqualifier.

(d) If a fire service professional or instructor held certification on or before January 15, 2008 and applies for a new certification, the Department will proceed as follows:

(A) No action will be taken on a discretionary conviction that occurred prior to January 15, 2003.

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(B) The Department will not initiate revocation proceedings based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.

(C) The Department may initiate denial of a new certification based on a discretionary disqualifying conviction that occurred between January 15, 2003 and January 15, 2008.

(e) If a fire service professional or instructor held certification on January 15, 2008 and applies for or obtains certification after that date, the Department may initiate denial or revocation of all certifications held based on a discretionary disqualifying conviction that occurred prior to January 15, 2008.

(f) If a fire service professional or instructor is convicted of a discretionary disqualifying crime on or after January 15, 2008, the Department may initiate a denial or revocation of all certification(s) upon learning of the conviction.

Initial Minimum Periods of Ineligibility

(5) Upon determination to proceed with the denial or revocation of a fire service professional's or instructor's certification based on discretionary disqualifying misconduct identified in section (4), the Fire Policy Committee and Board will determine an initial minimum period of ineligibility to apply for certification. The initial minimum period of ineligibility will range from 30 days to 7 (seven) years.

(a) In determining the initial minimum period of ineligibility for discretionary disqualifying misconduct listed in section (4) of this rule, the Fire Policy Committee and the Board will take into consideration any aggravating or mitigating factors subject to the provisions of section (7) of this rule.

(b) A person is not eligible to reapply for training or certification if the person had training or certification denied or revoked for mandatory grounds identified in section (3) of this rule.

(c) The initial minimum period of ineligibility will be included in any Final Order of the Department.

(d) Any subsequent eligibility to apply for certification will be determined by the Board, after a review by the Fire Policy Committee, subject to the provisions of section (9) of this rule.

Procedure for Denial or Revocation of a Certificate

(6) Scope of Revocation. Except as provided in (4) above, when the Department denies or revokes the certification of any fire service professional or instructor under the provisions of OAR 259-009-0070, the revocation will encompass all fire service certificates the Department has issued to that person.

(7) Denial and Revocation Procedure.

(a) Agency Initiated Review: When the entity utilizing a fire service professional or instructor requests that a fire service professional's or instructor's certification be revoked or denied, it must submit in writing to the Department the reason for the requested revocation or denial and all factual information supporting the request.

(b) Department Initiated Review: Upon receipt of factual information from any source, and pursuant to ORS 181.662, the Department may request that the fire service professional's or instructor's certification be revoked or denied.

(c) Department Staff Review: When the Department receives information, from any source, that a fire service professional or instructor may not meet the established standards for Oregon fire service professionals or instructors, the Department 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 the Department 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, the Department will request further information from the employer or conduct its own investigation of the matter.

(C) If the Department determines that a fire service professional or instructor may have engaged in discretionary disqualifying misconduct listed in subsection (4), the case may be presented to the Board, through the Fire Policy Committee.

(D) The Department will seek input from the affected fire service professional or instructor, allowing him or her to provide, in writing, information for the Fire Policy Committee and Board's review.

(E) In misconduct cases in which there has been an arbitrator's opinion related to the fire service professional's or instructor's employment, the Department will proceed as follows:

(i) If the arbitrator's opinion finds that underlying facts supported the allegations of misconduct, the department 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, the Department 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, the Department 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 Fire Policy Committee and Board will consider mitigating and aggravating circumstances including, but not limited to the following:

(A) When the misconduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor (i.e., before, during, after);

(B) Whether the fire service professional or instructor served time in prison/jail; and if so, the length of incarceration;

(C) Whether restitution was ordered, and if so, whether the fire service professional or instructor met all obligations;

(D) Whether the fire service professional or instructor has ever been on parole or probation. If so, the date on which the parole or probation period expired or is set to expire;

(E) Whether the fire service professional or instructor has more than one conviction and if so, over what period of time;

(F) Whether the misconduct involved domestic violence;

(G) Whether the fire service professional or instructor self reported the misconduct;

(H) Whether the conduct involved dishonesty, fraud, deceit, or misrepresentation;

(I) Whether the conduct was prejudicial to the administration of justice;

(J) Whether the conduct adversely reflects on the fitness of the fire service professional or instructor to perform as a fire service professional or instructor; and

(K) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession.

(L) What the fire service professional's or instructor'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.

(f) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with OAR 137-003-0001 of the Attorney General's Model Rules of Procedure adopted under 259-005-0015. The Department will have a copy of the notice served on the fire service professional or instructor.

(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 with the Department a written request for a hearing.

(B) A party who has been served with a "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(h) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order revoking or denying certification pursuant to OAR 137-003-0645.

(i) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(j) Proposed Order. The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(k) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

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(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(I) Final Order: A final order will be issued pursuant to OAR 137-003-0070 if a fire service professional or instructor fails to file exceptions and arguments in a timely manner.

(m) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a fire service professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification under the terms and conditions outlined in the stipulated order.

Appeals, Reapplication, and Eligibility Determinations.

(8) Appeal Procedure. A fire service professional or instructor, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

(9) Reapplication Process.

(a) Any fire service professional or instructor whose certification has been denied or revoked under section (4) of this rule for discretionary disqualifying misconduct may reapply for certification within the applicable timeframes described in (4) and (5) of this rule.

(b) Any fire service professional or instructor 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 the maximum initial period of ineligibility identified in (5) 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 the Fire Policy Committee has recommended that a fire service professional's or instructor's eligibility to apply for fire service 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 or instructor's request for eligibility to apply for certification.

(ii) In considering a request for an eligibility determination, the Fire Policy Committee and the Board may consider mitigating and aggravating circumstances identified in Section (7)(d) of this rule.

(iii) After reviewing a written request for an eligibility determination, the Board, through the Fire 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 fire service professional or instructor is employed or utilized by a fire service agency; and

(D) All requirements for certification have been met.

[ED. NOTE: Tables referenced are available from the agency.]

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.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 3-2008, f. & cert. ef. 1-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10

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Department of Transportation, Driver and Motor Vehicle Services Division Chapter 735

Rule Caption: Updates DMV rules for abandoned vehicles and vehicle appraisers to comply with law changes.

Adm. Order No.: DMV 11-2010

Filed with Sec. of State: 6-16-2010

Certified to be Effective: 6-16-10

Notice Publication Date: 5-1-2010

Rules Amended: 735-024-0075, 735-024-0130, 735-158-0000, 735-158-0005, 735-158-0010

Rules Repealed: 735-024-0075(T), 735-024-0080, 735-024-0130(T), 735-158-0000(T), 735-158-0005(T), 735-158-0010(T)

Subject: In part, chapter 371, Oregon Laws 2009 amended and repealed many of the statutes pertaining to disabled or abandoned vehicles taken into custody by a public body, including disposal of such vehicles. This rulemaking updates OAR 735-024-0075, 735-024-0130, 735-158-0000, 735-158-0005 and 735-158-0010 to bring these administrative rules into compliance with these law changes and to remove citations and references to statutes that have been repealed.

OAR 735-024-0080 is repealed because ORS 819.220, the statutory authority for the rule, is repealed.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-024-0075

Notification of Disposal of Abandoned Vehicle Appraised at \$500 or Less

(1) This rule designates the form of notice that must be submitted to DMV for the disposal of an abandoned vehicle appraised at a value of \$500 or less under the provisions of ORS 819.215.

(2) For purposes of this rule the following definitions apply:

(a) "An authority" means a law enforcement or government agency, as described in ORS 819.140, authorized to take a vehicle into custody;

(b) "Dismantler" means a person who is the holder of a valid dismantler certificate issued under ORS 822.110; and

(c) "Tower" means the towing business that tows a vehicle at the request of an authority.

(3) A completed and signed Abandoned Vehicle Certificate (DMV Form 271) must be submitted to DMV when an authority or tower disposes of an abandoned vehicle under ORS 819.215(1).

(4) DMV will not accept an Abandoned Vehicle Certificate if the certificate:

(a) Does not contain the appraised value of the vehicle, the name of the dismantler to whom the vehicle will be disposed, and the certification, including the name, address and authorized signature of the authority or tower disposing of the vehicle;

(b) Does not include information sufficient for DMV to identify the vehicle such as the make, plate number, registration state, or vehicle identification number;

(c) Shows an appraised value of more than \$500; or

(d) Has a form revision date before December 1998.

[ED. NOTE: Form referenced is available from the agency.]

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 819.215

Stat. Implemented: ORS 819.215

Hist.: DMV 12-2005, f. 5-19-05, cert. ef. 6-1-05; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DMV 11-2010, f. & cert. ef. 6-16-10

735-024-0130

Salvage Title — Vehicles Subject and When/Who Required to Apply

(1) An Oregon salvage title is an ownership document that is used to assign interest and to make an odometer disclosure on a vehicle, from the time that the certificate of title is required to be surrendered to DMV until:

(a) The vehicle is repaired, rebuilt or is issued a certificate of title; or

(b) It is determined that:

(A) The vehicle will not be rebuilt or repaired; and

(B) The frame or unibody of the vehicle will not be used to repair or construct another vehicle.

(2) Vehicle types subject to the issuance of salvage titles, include any vehicle:

(a) Of the type required to be titled or registered in this state, if operated over the highways;

(b) Snowmobiles required to be titled and registered by DMV; and

(c) Any other vehicle that has been issued a certificate of title by DMV, or some other jurisdiction.

(3) Unless exempt under ORS 819.016(3), an application for a salvage title is required on a subject vehicle that is:

(a) Wrecked, dismantled, disassembled, or where the form of the vehicle is substantially altered, as covered in ORS 819.010 and OAR 735-024-0050; or

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(b) Determined to be a totaled vehicle, and the title is required to be surrendered to DMV under ORS 819.012 or 819.014; or

(c) An abandoned vehicle that is acquired under the provisions of ORS 819.215.

(4) When a salvage title is required, application must be made:

(a) For a vehicle that is declared a total loss by an insurer that is obligated to cover the loss, or that the insurer takes possession of or title to:

(A) The insurer must apply for the salvage title if the insurer obtains the title as provided under ORS 819.014, unless a salvage title has already been issued; or

(B) The owner must apply for the salvage title if the vehicle owner does not surrender the title to the insurer.

(b) By the owner for a vehicle that is totaled due to damage when the loss is not covered by an insurer; or

(c) By any person who acquires an abandoned vehicle under ORS 819.215; or

(d) By any person who receives or purchases a vehicle subject to salvage title requirements unless:

(A) A salvage title or similar document has already been issued by Oregon or some other jurisdiction, and the person is not required to apply for salvage title in his or her name under OAR 735-024-0170; or

(B) A totaled vehicle that was purchased before January 1, 1992, and is not subject until the vehicle, frame or unibody is transferred, or the vehicle is wrecked, dismantled, disassembled, or substantially altered in form.

(5) The term "receive" as used in section (4) of this rule and ORS 819.012, does not apply to auctions or other parties who as an agent of another, take possession or control of a vehicle, but who do not actually acquire an interest in the vehicle or vehicle salvage. This section does not:

(a) Relieve insurers or persons who are actually transferring interest in the vehicle or vehicle salvage from the responsibility to apply for and provide any purchaser with a salvage title, as required under ORS 819.012 through 819.018 and this rule; or

(b) Prevent parties from entering into agreements to allow agents to apply for and provide salvage titles to any purchaser on behalf of another.

(6) An odometer disclosure is required when application is made for the issuance or transfer of a salvage title for motor vehicles, except those exempt from disclosure requirements under OAR 735-028-0010.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140, 819.012, 819.014, 819.016 & 819.018
Stats. Implemented: ORS 803.140, 819.010, 819.012, 819.014, 819.016, 819.018, 819.030, 819.040 & 49 CFR Part 580

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DMV 11-2010, f. & cert. ef. 6-16-10

735-158-0000

Vehicle Appraiser Certificate

(1) An applicant for a vehicle appraiser certificate or renewal under ORS 819.480 must submit the following to the DMV Business Regulation Section:

(a) A completed and signed DMV Application for Vehicle Appraiser Certificate (DMV Form 735-6610);

(b) All applicable fees; and

(c) Except as provided in section (2) of this rule, proof of two years combined work experience as a vehicle appraiser:

(A) For a new or used car business, tow business, insurance company, vehicle body repair business, law enforcement agency or any other state or local jurisdiction; or

(B) In the operation or employment of a certified vehicle dismantler business.

(2) A qualified applicant for a vehicle appraiser certificate may substitute a certificate of completion of the Vehicle Appraiser Education Program established under OAR 735-152-0010 for proof of work experience required under subsection (1)(c) of this rule. For purposes of 735-158-0010 and this section, "qualified applicant" means an individual who, as a condition of employment, is:

(a) Required to conduct vehicle appraisals under ORS 819.210, 819.215 or 819.280; and

(b) Required to conduct vehicle appraisals as an employee of a towing business that holds a valid towing business certificate issued under ORS 822.205 and OAR chapter 735, division 154; or

(c) Employed by a public agency authorized to take a vehicle into custody and tow the vehicle as described under ORS 819.140. This includes state, city and county law enforcement agencies and other agencies responsible for enforcing laws relating to abandoned vehicles and vehicles that constitute a roadside hazard.

(4) DMV will not process an application that is incomplete. An incomplete application and the fees submitted with the application will be returned to the applicant.

(5) When DMV denies issuance or renewal of a vehicle appraiser certificate, DMV will retain the fees submitted with the application to cover the cost of processing the application.

(6) In addition to any other penalty provided by law, DMV may suspend, revoke, or refuse to issue or renew a vehicle appraiser certificate on the following grounds:

(a) Making a false or misleading statement or misrepresentation, including by act of omission, pertaining to:

(A) An application for a vehicle appraiser certificate;

(B) A vehicle appraiser report;

(C) Any document required by DMV; or

(D) Any investigation by DMV or law enforcement.

(b) Failure to comply with any applicable statute or rule pertaining to a vehicle appraiser certificate.

(c) DMV determines the applicant was convicted of a felony or misdemeanor related to fraud or dishonesty, if the conviction occurred less than three years before the date of application.

(7) A vehicle appraiser or applicant for a vehicle appraiser certificate who is subject to suspension, revocation or refusal to issue or renew the vehicle appraiser certificate is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act, ORS Chapter 183.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 819.480

Stats. Implemented: ORS 819.210, 819.215, 819.480, 819.482 & 822.700

Hist.: MV 25-1981(Temp), f. & ef. 12-1-81; MV 13-1982, 5-28-82, ef. 6-1-82; MV 27-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-071-0078; DMV 7-2002(Temp), f. 3-14-02, cert. ef. 3-18-02 thru 9-13-02; DMV 13-2002, f. & cert. ef. 6-24-02; DMV 16-2006, f. & cert. ef. 11-17-06; DMV 13-2007, f. & cert. ef. 11-30-07; DMV 8-2009, f. & cert. ef. 3-20-09; DMV 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DMV 11-2010, f. & cert. ef. 6-16-10

735-158-0005

Vehicle Appraiser Education Program

(1) Training Requirements. The Vehicle Appraiser Education Program is a non-vocational training program designed for individuals who need a vehicle appraiser certificate as a condition of employment, as described in OAR 735-158-0000(2). The training, conducted by DMV-approved instructors, provides education on the basic skills and minimum knowledge required to appraise vehicles in Oregon. The training is a minimum of four hours and covers:

(a) Oregon laws and administrative rules applicable to certified vehicle appraisers and the appraisal of vehicles, including but not limited to:

(A) Privileges granted by an appraiser certificate and certificate renewal;

(B) Reporting requirements and appraisal-related forms; and

(C) Procedures and requirements regarding the towing of vehicles from a public right-of-way or private property, and the disposition of vehicles when towed.

(b) Accepted appraisal methods, determining vehicle value and how to recognize high-value vehicles and collector cars; and

(c) Resources of information relating to vehicle appraisers and the appraisal of vehicles. For example, information may be obtained from associations, car clubs, publications, vehicle valuation guides, seminars, or websites.

(2) Individuals who successfully complete the training program will receive a statement of completion from the training instructor. The statement may be submitted to DMV as proof of work experience required under OAR 735-158-0010 when applying for a vehicle appraiser certificate.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 819.480

Stats. Implemented: ORS 819.210, 819.215, 819.480, 819.482 & 822.700

Hist.: DMV 8-2009, f. & cert. ef. 3-20-09; DMV 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DMV 11-2010, f. & cert. ef. 6-16-10

735-158-0010

Vehicle Appraiser Education Program; Instructor Qualifications; Requirements

(1) A person who wishes to become a DMV-approved Vehicle Appraiser Education Program instructor must:

(a) Hold a valid Oregon Vehicle Appraiser Certificate;

(b) Have a minimum of five consecutive years experience as a certified vehicle appraiser in Oregon; and

(c) Submit a written request to become an instructor to DMV Business Regulation Section, 1905 Lana Ave. NE, Salem Oregon 97314. The request must include the following information for the person making the request:

(A) Name, mailing address and telephone number;

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(B) A copy of the person's current Vehicle Appraiser Certificate. The copy must show the certificate number, date of issuance and date of expiration; and

(C) An outline of the curriculum the instructor plans to use for the training. At a minimum, the curriculum must cover all topics described under OAR 735-158-0005(1) and include a least four hours of training.

(2) DMV will notify a person who submits a request to become a Vehicle Appraiser Education Program instructor upon approval or denial of their request.

(3) A DMV-approved instructor may conduct training classes at any time. However, the instructor must submit the following to DMV within seven business days of completing a training:

- (a) The date and time of the training; and
- (b) For each person who successfully completes the training:
 - (A) The person's name, mailing address and telephone number; and
 - (B) The name, mailing address and telephone number of the tow company or public agency with whom the person is employed.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 819.480
Stats. Implemented: ORS 819.210, 819.215, 819.480, 819.482 & 822.700
Hist.: DMV 8-2009, f. & cert. ef. 3-20-09; DMV 22-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-30-10; DMV 11-2010, f. & cert. ef. 6-16-10

Rule Caption: Specifies Procedures and Requirement for the Collection and Transfer of County and District Registration Fees.

Adm. Order No.: DMV 12-2010(Temp)

Filed with Sec. of State: 6-16-2010

Certified to be Effective: 6-16-10 thru 12-10-10

Notice Publication Date:

Rules Adopted: 735-032-0065

Subject: In pertinent part, ORS 801.040, 801.041, 801.042, 802.110, and 803.445 authorize Oregon counties and districts to impose vehicle registration fees that are in addition to state vehicle registration fees. ORS 803.445 requires DMV to implement these statutes through adoption of an administrative rule. A county or district that chooses to impose its own vehicle registration fees must adopt an ordinance establishing the fees, and enter into an intergovernmental agreement with DMV. DMV is required to collect vehicle registration fees on behalf of any county or district that has established registration fees, and to transfer collected fee amounts to the county or district after deducting DMV's expenses for the collection, transfer and administration of the fees.

Chapter 865, Oregon Laws 2009, which became effective September 28, 2009, amended ORS 801.041 to authorize Oregon counties with a population of 350,000 or more to impose county vehicle registration fees to fund the construction of a bridge that crosses the Willamette River in the City of Portland. For this purpose, Multnomah County has adopted Multnomah County Ordinance MCC §§ 11.250-11.256 to impose Multnomah County vehicle registration fees on certain vehicles within Multnomah County pursuant to amended ORS 801.041. The ordinance becomes effective September 1, 2010. DMV will collect these fees for Multnomah County as required by ORS 801.041, 802.110 and 803.445. Multnomah County is the only county to adopt an ordinance for collection of county or district vehicle registration fees.

DMV proposes the temporary adoption of OAR 735-032-0065 to implement the collection and transfer of county or district vehicle registration fees in order to begin collection of the fees authorized by the Multnomah County ordinance.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-032-0065

Collection of County or District Registration Fees

(1) This rule specifies the procedures and requirements when DMV collects county or district registration fees pursuant to ORS 801.040, 803.041 and 803.445.

(2) As used in this rule the following definitions apply:

(a) "County" or "district" means a unit of local government as defined in ORS 190.003.

(b) "County or district ordinance" means an ordinance enacted by the governing body of a county or district establishing registration fees imposed on subject vehicles.

(c) "County or district registration fees" means county vehicle registration fees or district vehicle registration fees established and imposed under a county or district ordinance and collected by DMV upon registration and renewal of registration of a subject vehicle.

(d) "District" means a mass transit or transportation district, or a metropolitan service district, as defined in ORS 801.237.

(e) "Merchant fee" means the fee charged to DMV by a credit or debit card company to process a credit or debit card transaction. DMV is charged a merchant fee each time a customer pays registration fees, including county or district registration fees, using a credit or debit card.

(f) "Registration" means the initial recording of a vehicle as authorized for use within the State of Oregon pursuant to ORS 803.350.

(g) "Registration renewal" or "renewal" means an extension of registration.

(h) "State registration fees" means the fee amounts collected under ORS 803.420 upon initial registration or registration renewal of a vehicle authorized to operate for use within the State of Oregon pursuant to ORS 803.350.

(i) "Subject vehicle" means a vehicle registered or required to be registered at a residence or business address within a county or district and which is subject to a county or district registration fee.

(3) DMV will collect county or district registration fees, upon request of a county or district qualified under ORS 803.041 or 803.042 to impose vehicle registration fees. DMV will collect county or district registration fees in addition to state registration fees.

(4) Before collecting county or district registration fees, the county or district must enter into an intergovernmental agreement with DMV. The intergovernmental agreement will include the following:

(a) A citation of the county or district ordinance number authorizing the imposition of county or district registration fees and granting DMV authority to collect county or district vehicle registration fees;

(b) A description of each vehicle type subject to county or district registration;

(c) For each vehicle type subject to county or district registration fees, the county or district registration fee amount(s) and the registration period(s);

(d) The date DMV will begin collecting county or district registration fees;

(e) A per-transaction administrative fee to cover DMV expenses, which will be deducted prior to transfer of county or district registration fees to the county or district. A per-transaction administrative fee does not include merchant fees, refunds or uncollectible debt;

(f) A description of how and when the moneys collected by DMV under the agreement are paid to the county or district after the deduction of DMV's expenses for collection, transfer and administration of county vehicle registration fees, and any deduction for credits described in ORS 803.445(5); and

(g) The method for resolving disputes regarding imposition and collection of a county or district registration fee by a vehicle owner and payment of a refund if it is determined a fee was collected in error or it is determined no county or registration fee is owing.

(4) DMV will transfer to the county or district the moneys due on a monthly basis unless another basis is established in the intergovernmental agreement between DMV and the county or district.

Stat. Auth.: ORS 184.616, 184.619, 190.110, 801.040, 801.041, 802.110, 803.420, 803.445

Stats. Implemented: ORS 801.040, 801.041, 802.110, 803.420, 803.445

Hist.: DMV 12-2010(Temp), f. & cert. ef. 6-16-10 thru 12-10-10

Department of Transportation, Highway Division Chapter 734

Rule Caption: Adopt-A-Highway Program.

Adm. Order No.: HWD 5-2010

Filed with Sec. of State: 6-16-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 5-1-2010

Rules Adopted: 734-029-0045

Rules Amended: 734-029-0005, 734-029-0010, 734-029-0020, 734-029-0030, 734-029-0040

Subject: The Adopt-A-Highway program described in ORS 366.158 allows for the beautification of state highways with an emphasis on litter clean up. Chapter 547, 2009 laws (HB 2424) expanded the Adopt-A-Highway program to include the removal of noxious weeds. These rules describe how an individual, group, or

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business may obtain a permit from the Department of Transportation to adopt a section of state highway to remove noxious weeds, clean up litter, or both.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-029-0005

Purpose

The purpose of the Adopt-A-Highway program is to provide citizens of Oregon an opportunity to pick up litter, remove noxious weeds, and improve the appearance of the State Highway System in accordance with ORS 366.158.

Stat. Auth.: ORS 184.616, 184.619, 366.158

Stats. Implemented: ORS 366.158

Hist.: HWY 6-1992, f. & cert. ef. 3-26-92; HWD 5-2010, f. 6-16-10, cert. ef. 7-1-10

734-029-0010

Scope

Any volunteer group, identified as “Applicant” in Division 29 rules, may adopt a section of highway on the State Highway System for the purpose of picking up litter, removing noxious weeds, or both. Work activities, when approved, may also include graffiti removal or maintenance of landscaped areas.

Stat. Auth.: ORS 184.616, 184.619, 366.158

Stats. Implemented: ORS 366.158

Hist.: HWY 6-1992, f. & cert. ef. 3-26-92; HWD 5-2010, f. 6-16-10, cert. ef. 7-1-10

734-029-0020

Definitions

As used in Division 29 rules, the following definitions will apply:

(1) “Applicant” means the individual or individuals, corporation, company, firm, business, partnership, or public agency volunteering their time by adopting a section of highway, and named in and signing the application, and to whom the Permit is issued.

(2) “DM” means the Department District Manager or designee. DMs are responsible for highway maintenance, operations, and issuing permits for use of operating right of way for all State highways within a specific geographic area or “District”.

(3) “Department” means the Oregon Department of Transportation.

(4) “Highway” means the public way for vehicular travel that is under the jurisdiction of the Department. It also includes medians, highway shoulders, improvements appurtenant to the highway, such as support or tunnel structures, bicycle ways or sidewalks, and right of way used for the operation of the roadway.

(5) “Noxious Weed” means any plant identified by Department of Agriculture in OAR chapter 603, division 52 “Quarantine; Noxious Weeds” or the appropriate county governing body as described in ORS 569.

(6) “Participant” means the individual or member of the Applicant actually performing work on the highway under a Permit issued pursuant to Division 29 rules.

(7) “Permit” means the application as a fully executed form signed, issued and controlled by the DM on behalf of the Department allowing Applicant and its Participants to perform activities as approved and deemed necessary by the DM. A Permit includes all attached provisions and exhibits. A Permit does not convey any property right or interest.

(8) “Work Site” means the area where the permitted work is to be conducted.

Stat. Auth.: ORS 184.616, 184.619, 366.158

Stats. Implemented: ORS 366.158

Hist.: HWY 6-1992, f. & cert. ef. 3-26-92; HWD 5-2010, f. 6-16-10, cert. ef. 7-1-10

734-029-0030

General Requirements

(1) The Applicant must apply in writing on the form provided by the Department to the DM for the District in which the section of highway requested to be adopted is located. When noxious weed removal is a desired work activity, the Applicant must also provide the DM with a plan approved in writing by the Oregon Department of Agriculture or the appropriate county governing body. The plan shall include the species of plant to be removed, the method of removal that does not include the use of pesticides, herbicides, or machine powered equipment, and the timing and frequency of noxious weed removal.

(2) An “Adopt-A-Highway” permit will be executed by the Applicant and the DM under the authority of OAR Chapter 734, Division 55 and Division 29. In the event of a conflict, Division 29 rules will prevail. The Permit will list the specific requirements and obligations of both the Applicant and its Participants, and the Department.

(3) An application is not a Permit until it is approved and signed by the DM. No work is to be done along the highway until the Applicant has

obtained a valid Permit. The approved Permit must be physically at the work site when the work is being performed.

(4) The section of highway adopted will be at least two miles in length for litter pickup or noxious weed removal. This minimum may be modified at the discretion of the DM where there are unique or unusual situations or features having to do with allowed work activities on a specific highway section.

(5) The term of the permit will be for a period of one, two, or three years.

(6) A section of highway may be adopted by more than one Applicant with only one Applicant for litter pick up and one Applicant for noxious weed removal. If more than one Applicant requests the same section of highway for the same work activity, the DM may make the selection by earliest date of application or by a random drawing.

(7) Assignment of a specific section of highway shall be at the discretion of the DM.

(8) The DM may consider factors such as width of right-of-way, geometrics, congestion, and sight distance in determining which highways or sections of highway will be eligible for adoption under Division 29 rules.

(9) Subcontracting or assigning work, or hiring or paying a wage or salary for work on the adopted section by the Applicant to any party is prohibited and will result in cancellation of the permit.

(10) The DM may cancel a Permit for any reason including, but not limited to safety considerations concerning highway operations, failure of the Applicant to perform the work described in the Permit, or failure of the Applicant to comply with provisions of the Permit. This cancellation will be issued in writing.

(11) The Applicant may cancel the permit with 30 days written notice to the DM.

(12) An Applicant has the option of renewing the permit for subsequent terms subject to the approval of the DM. Such request must be submitted in writing, signed by the Applicant and submitted to the DM at least 30 days prior to the permit expiration date.

(13) The Applicant shall not use state highways to display advertising signs or display or sell merchandise of any kind.

Stat. Auth.: ORS 184.616, 184.619, 366.158

Stats. Implemented: ORS 366.158

Hist.: HWY 6-1992, f. & cert. ef. 3-26-92; HWD 5-2010, f. 6-16-10, cert. ef. 7-1-10

734-029-0040

Specific Requirements

(1) Applicant and Participant Responsibilities:

(a) The Applicant will be responsible and liable for the care, control, supervision and assurance of safety of all Participants. Each Participant will be required to execute a Department liability release form reflecting awareness and acknowledgement of the potentially hazardous nature of the work involved;

(b) The Applicant and each Participant must comply with and abide by all laws, rules, and regulations relating to safety and use of the highway, and such other terms and conditions as may be required in the Permit. The Applicant or individual Participants may be excluded from participation or the permit canceled, at the discretion of the DM for violation of the terms of the Permit or Division 29 rules;

(c) The Applicant will provide adult supervision at the work site by at least one Participant over 18 years of age. Each Participant must be at least 16 years of age. Presence at the work site of individuals under 16 years of age is not allowed;

(d) The Applicant and each Participant must review the safety information provided by the Department at least once a year prior to participating in the actual work;

(e) The Applicant is to pick up litter at least four times a year; noxious weeds are to be removed at least two times a year. This frequency may be increased by written notice of the DM dependent on condition and appearance of the highway section;

(f) If maintenance of landscape improvements, or graffiti removal are included as a planned work activity, the scope of work and specific requirements and limitations will be agreed to by the Applicant and the DM, and identified in the permit;

(g) Supplies, materials, and work area signs furnished by the DM on behalf of the Department will be obtained from and returned to the DM during regular business hours. The Applicant may furnish its own additional supplies for its exclusive use such as a first-aid kit and drinking water.

(h) The Applicant will be responsible for appointing or selecting a spokesperson to act as the representative of the Applicant in matters relating to the Permit. The Applicant or its spokesperson is responsible for assuring compliance by Participants with safety procedures, proper

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Participant clothing and footwear, proper parking of vehicle(s) along the highway, arranging transportation of the Participants to and from the work site, notifying the DM of the location of large, heavy, or potentially hazardous items found along the highway, checking out and returning supplies provided by the Department, and assuring that a signed liability release has been provided to the Department for each Participant;

(i) The Applicant will be responsible for placing litter and noxious weeds in trash bags furnished by the DM and conducting other work activities as described in the Permit.

(j) Vehicles used by the Applicant to transport Participants to and from the work site must be parked so as not to create a hazard to motor vehicle traffic or interfere with the regular maintenance of the roadway. Vehicles must be moved by the Applicant upon request of the DM or law enforcement personnel.

(2) Department Responsibilities:

(a) The DM will consult with an Applicant to determine the specific section of highway to be adopted;

(b) The DM will furnish work area signs, trash bags, reflective vests, colored flags to mark large, heavy or potentially hazardous litter, and safety awareness information for Applicant safety meetings;

(c) The DM will furnish and erect two acknowledgement signs, one at each end of the adopted highway section, with the Applicant's name or acronym displayed. When the section of highway adopted is not linear to the highway a lesser number of signs may be placed;

(d) If the Department determines that the sign(s) would create an unsafe condition for persons using the highway, it may choose not to erect the sign(s). Acknowledgement signs that are repeatedly vandalized or stolen may not be replaced at the discretion of the DM;

(e) The DM will be responsible for removal of litter that is large, heavy or potentially hazardous that has been flagged by the Applicant. The removal and disposal of filled litter bags, landscape debris, and noxious weeds will be as described in the Permit.

Stat. Auth.: ORS 184.616, 184.619, 366.158

Stats. Implemented: ORS 366.158

Hist.: HWY 6-1992, f. & cert. ef. 3-26-92; HWD 5-2010, f. 6-16-10, cert. ef. 7-1-10

734-029-0045

Acknowledgement Signs

(1) Signs may be placed by the Department as described in OAR 734-029-0040(2) acknowledging the Applicant's volunteer contribution with the Applicant's name or acronym. The Applicant may be required to provide evidence of the Applicant's existence such as the Applicant's organizational bylaws, website, or letterhead. When the Applicant is an individual or family group, the individual's name (first name or initial and last name) or the family name (e.g. Smith Family) will be used.

(2) The acknowledgement sign is not intended for advertising or as a memorial; items such as an internet address, website, or telephone number will not be allowed. The Applicant's name may be verified with the Secretary of State's business name registry or other information available to the Department.

(3) The acknowledgement sign(s) may be installed after the Applicant has successfully performed the work activities described in the Permit at least once as determined by the DM.

(4) The sign(s) will remain the property of the Department and be removed by the DM when the permit is cancelled or has expired.

Stat. Auth.: ORS 184.616, 184.619, 366.158

Stats. Implemented: ORS 366.158

Hist.: HWD 5-2010, f. 6-16-10, cert. ef. 7-1-10

Rule Caption: Notification of Hazardous Tree Removal from Private Property.

Adm. Order No.: HWD 6-2010

Filed with Sec. of State: 6-16-2010

Certified to be Effective: 6-16-10

Notice Publication Date: 5-1-2010

Rules Adopted: 734-035-0150

Subject: HB 2235 of the 2009 legislative session (Chapter 130, OL 2009) grants the Department of Transportation authority to go on private property without notifying the property owner when the Department determines that a tree creates an immediate and substantial risk of damage or injury to the state highway. This rule describes how the Department will attempt to locate and notify the private property owner of its actions.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-035-0150

Notification of Hazardous Tree Removal from Private Property

(1) Pursuant to ORS 366.365, when the Department determines that any tree located on private property creates an immediate and substantial risk of damage or injury by obstructing, hanging over or otherwise encroaching or threatening to encroach in any manner on a state highway, and the property owner isn't readily available, it may go upon such property to cut down or remove such tree.

(2) For the purposes of this rule, a tree creates an immediate and substantial risk of damage or injury when it is determined by the District Manager, or designee, that such tree interferes with the safe, unrestricted movement of traffic; is encroaching on the state highway; or is in a condition that creates a reasonable likelihood it will, in the foreseeable future, encroach on the state highway to a degree that traffic should be restricted or prohibited from using the highway.

(3) The Department, when cutting down or removing any tree from private property, will take measures reasonable under the circumstances to protect the property upon which such tree is located and the value of the cut or removed tree.

(4) After cutting down or removing any tree as described in this rule, the Department will notify the owner of the private property by sending written notice by certified mail to the property owner listed in the county tax records.

(5) The written notice will include:

(a) A general description of the location of the private property and the date any tree was cut down or removed from the private property; and

(b) Information concerning the location of the tree or how such location can be obtained.

(6)(a) The tree will be left on the private property if it is reasonable to do so and can be accomplished in a safe manner.

(b) If the tree can not reasonably be left on the private property, the notice will also include Department contact information such as a telephone number or address and a contact name to claim any tree removed from the private property.

(A) The property owner will have 30 days from the date of the written notice to claim and recover the tree. Any cost incurred to claim or recover the tree is at the property owner's expense.

(B) The person claiming the tree must be able to show a right to possess the tree; such as a copy of the certified letter sent by the Department. Any tree not claimed within 30 days becomes the property of the Department to be disposed of at the Department's discretion following standard Department practices.

Stat. Auth.: ORS 184.616, 184.619, 366.205, 366.365

Stats. Implemented: ORS 366.365

Hist.: HWD 6-2010, f. & cert. ef. 6-16-10

Employment Department, Child Care Division Chapter 414

Rule Caption: Renames Criminal History Registry to Central Background Registry, expands list of subject individuals.

Adm. Order No.: CCD 1-2010

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Adopted: 414-061-0065

Rules Amended: 414-061-0000, 414-061-0010, 414-061-0020, 414-061-0030, 414-061-0040, 414-061-0050, 414-061-0060, 414-061-0070, 414-061-0080, 414-061-0090, 414-061-0100, 414-061-0110, 414-061-0120

Subject: Renames Criminal History Registry to Central Background Registry. Expands list of subject individuals subject to background checks; now includes Metro Service District zoo employees, volunteers, and contractors; also includes respite care workers.

Rules Coordinator: Courtney Brooks—(503) 947-1724

414-061-0000

Purpose

(1) The Child Care Division will conduct criminal records checks and child protective services records checks on subject individuals, as defined in OAR 414-061-0030, for enrollment of subject individuals in the Central Background Registry.

(2) These rules provide guidelines on how CCD obtains criminal records and child protective services records on subject individuals, applies

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such information to its determination about the suitability of the subject individual, and enrolls approved subject individuals in the Central Background Registry.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0010

Scope of Rules

(1) Consistent with the purposes of these rules, CCD will issue decisions about persons defined as subject individuals as to their suitability to be enrolled in the Central Background Registry and employed in programs defined as "Requesting Agencies" in OAR 414-061-0020(16).

(2) These rules (OAR 414-061-0000 through 414-061-0120) shall be construed and implemented consistent with the regulations governing:

(a) Child care licensing in OAR 414-205-0000 through 414-205-0170, 414-300-0000 through 414-300-0410, and 414-350-0000 through 414-350-0400;

(b) Pre-kindergarten programs in OAR 581-019-0005 through 581-019-0035;

(c) Parent-as-teacher programs in OAR 581-019-0050 through 581-019-0080; and

(d) Early childhood special education and early intervention programs in OAR 581-015-0900 through 581-015-1060.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0020

Definitions

(1) "Agency Agreement" means the written agreement between the Oregon State Police and the Oregon Child Care Division.

(2) "CCD" means the Child Care Division of the Employment Department.

(3) "Child Protective Services Records" means information on child abuse and neglect cases from the Department of Human Services.

(4) "Computerized Criminal History (CCH) System" means the on-line computer files of significant criminal offender information maintained by the Oregon State Police (OSP).

(5) "Conditional Enrollment" means temporary approval to be enrolled in the Central Background Registry following an OSP criminal records check and child protective services records check but prior to receipt by the Division of the results of a required FBI criminal records check.

(6) "Criminal Records" means information, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release and includes the OSP Computerized Criminal History System.

(7) "Early Childhood Care and Education Program" means a regulated child care facility, federally-funded Head Start program, Oregon Department of Education funded pre-kindergarten program, parent-as-teacher program, or early childhood special education/early intervention program.

(8) "Employee" means any individual caring for, overseeing, or who has or may have access to children, who holds a paid position in a requesting agency.

(9) "Employee of the Child Care Division" means any individual employed by the Child Care Division who works in the child care licensing unit.

(10) "Enrollment" means approval for a two-year period to be enrolled in the Central Background Registry following an OSP criminal records check, child protective services records check and, if required, an FBI records check.

(11) "Fee" means the charges assessed the subject individual for processing each criminal records check and/or fingerprint-based criminal records check.

(12) "FBI" means the Federal Bureau of Investigation.

(13) "Fingerprint-Based Criminal Records" means criminal offender information compiled and maintained by the Federal Bureau of Investigation.

(14) "Incident" means the commission of a Category I or Category II crime or a founded child protective services case.

(15) "OSP" means the Oregon State Police.

(16) "Reciprocal Agreement Program" includes:

(a) A metropolitan service district organized under ORS chapter 268; and

(b) A private agency or organization facilitating the provision of respite services, as defined in OS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

(16) "Requesting Agency" means a childhood care and education program or individual providing care to children that is:

(a) Regulated by CCD under ORS 657A.280 or 657A.330; or

(b) An early childhood care and education program.

(17) "Unsupervised Contact with Children" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0030

Subject Individuals

(1) For purposes of criminal records checks, including fingerprint-based criminal records checks, and child protective services records checks, "Subject Individual" means a person who wishes to seek employment as:

(a) The owner, operator or an employee or volunteer of a certified, registered or otherwise regulated facility caring for children that is subject to the jurisdiction of the Child Care Division of the Employment Department;

(b) The operator or an employee of an Oregon pre-kindergarten program or parent-as-teacher program under ORS 329.170 to 329.200;

(c) The operator or an employee of a federal Head Start Program regulated by the United States Department of Health and Human Services;

(d) An employee of the Child Care Division of the Employment Department;

(e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534; or

(f) A child care provider who is required to be enrolled in the Central Background Registry by any state agency.

(g) A designated contractor, employee or volunteer of a Metro Service District.

(h) A provider of respite services as defined in ORS 418.205 for parents pursuant to a properly executed power of attorney under ORS 109.056.

(2) An individual in any of the above facilities or programs who may have unsupervised contact with children is also a subject individual.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0040

Limitations of Inquiries

(1) Only CCD employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal records information pursuant to a valid agency agreement, as defined in OAR 414-061-0020(1). All such information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal records information (OAR 257-015-0000 to 257-015-0100). It is the responsibility of CCD to assure strict compliance with federal and state laws, rules, and procedures regarding, access, dissemination, maintenance, and destruction of criminal records information.

(2) Criminal records information obtained from OSP and/or the FBI will not be used for any purpose other than that for which it was obtained nor given to unauthorized persons or agencies.

(3) Criminal records information, including fingerprint-based criminal records information, and child protective services information shall be obtained by CCD to determine whether a subject individual has been convicted of a crime or has a founded child protective services record which is related to enrollment in the Central Background Registry.

(4) If a subject individual has been convicted of a crime which is related to enrollment in the Central Background Registry, the subject individual will be notified by CCD that he or she:

(a) Has a right to inspect and challenge the accuracy of his/her Oregon criminal records by contacting the Oregon State Police;

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(b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the Assistant Director of the FBI Identification Division, Washington, D.C. 20537-9700; and

(c) May inspect his/her own OSP record, but not his/her FBI record, by requesting the opportunity from CCD in writing.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03;

CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0050

History to be Considered

(1) CCD has determined that serious felonies and misdemeanors involving violence or unauthorized sexual conduct, especially with children or otherwise vulnerable persons, is fundamentally inconsistent with any responsibility for care of children. Conviction of crimes listed in Category I of this rule shall disqualify a subject individual from being enrolled in the Central Background Registry, unless the subject individual provides sufficient evidence of suitability as described in section (6) of this rule.

(a) The crimes in Category I include:

- (A) 162.165 Escape I;
- (B) 162.185 Supplying Contraband;
- (C) 163.095 Aggravated Murder;
- (D) 163.115 Murder;
- (E) 163.118 Manslaughter I;
- (F) 163.125 Manslaughter II;
- (G) 163.145 Criminally Negligent Homicide;
- (H) 163.165 Assault III;
- (I) 163.175 Assault II;
- (J) 163.185 Assault I;
- (K) 163.200 Criminal Mistreatment II;
- (L) 163.205 Criminal Mistreatment I;
- (M) 163.225 Kidnapping II;
- (N) 163.235 Kidnapping I;
- (P) 163.275 Coercion;
- (Q) 163.355 Rape III;
- (R) 163.365 Rape II;
- (S) 163.375 Rape I;
- (T) 163.385 Sodomy III;
- (U) 163.395 Sodomy II;
- (V) 163.405 Sodomy I;
- (W) 163.408 Unlawful Sexual Penetration II;
- (X) 163.411 Unlawful Sexual Penetration I;
- (Y) 163.415 Sexual Abuse III;
- (Z) 163.425 Sexual Abuse II;
- (AA) 163.427 Sexual Abuse I;
- (BB) 163.435 Contributing to Sexual Delinquency of Minor;
- (CC) 163.445 Sexual Misconduct;
- (DD) 163.515 Bigamy;
- (EE) 163.525 Incest;
- (FF) 163.535 Abandonment of a Child;
- (GG) 163.545 Child Neglect II;
- (HH) 163.547 Child Neglect I;
- (II) 163.555 Criminal Nonsupport;
- (JJ) 163.575 Endangering the Welfare of a Minor;
- (KK) 163.670 Using Child in Display of Sexually Explicit Conduct;
- (LL) 163.684 Encouraging Child Sexual Abuse I;
- (MM) 163.685 Encouraging Child Sexual Abuse II;
- (NN) 163.686 Encouraging Child Sexual Abuse III;
- (OO) 163.688 Possession of Materials Depicting Sexually Explicit Conduct of a Child I;

(PP) 163.689 Possession of Materials Depicting Sexually Explicit Conduct of a Child II;

(QQ) 163.693 Failure to Report Child Pornography;

(RR) 163.732 Stalking;

(SS) 164.075 Theft by Extortion;

(TT) 164.225 Burglary I;

(UU) 164.325 Arson I;

(VV) 164.395 Robbery III;

(WW) 164.405 Robbery II;

(XX) 164.415 Robbery I;

(YY) 166.085 Abuse of Corpse II;

(ZZ) 166.087 Abuse of Corpse I;

(AAA) 166.155 Intimidation II;

(BBB) 166.165 Intimidation I;

(CCC) 166.220 Unlawful Use of a Weapon;

(DDD) 166.270 Possession of Weapons by Certain Felons;

(EEE) 166.272 Unlawful Possession of Machine Guns, Certain Short

Barreled Firearms and Firearms Silencers;

(FFF) 166.275 Possession of Weapons by Inmates of institutions;

(GGG) 166.382 Possession of Destructive Device;

(HHH) 166.384 Unlawful Manufacture of Destructive Device;

(III) 166.429 Firearms Used in Felony;

(JJJ) 166.660 Unlawful Paramilitary Activity;

(KKK) 166.720 Racketeering Activity;

(LLL) 167.012 Promoting Prostitution;

(MMM) 167.017 Compelling Prostitution;

(NNN) 167.062 Sadomasochistic Abuse or Sexual Conduct in Live Show;

(OOO) 167.065 Furnishing Obscene Materials to Minors;

(PPP) 167.070 Sending Obscene Materials to Minors;

(QQQ) 167.075 Exhibiting an Obscene Performance to a Minor;

(RRR) 167.080 Displaying Obscene Materials to Minors;

(SSS) 167.087 Disseminating Obscene Material;

(TTT) 167.090 Publicly Displaying Nudity or Sex for Advertising

Purposes;

(UUU) 167.212 Tampering with Drug Records;

(VVV) 167.262 Adult Using Minor in Commission of Controlled Substance Offense; or

(WWW) 181.599 Failure to Report as Sex Offender.

(b) CCD will consider the following crimes if they were committed 15 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Assault III; Bigamy; Burglary I; Coercion; Contributing to Sexual Delinquency of Minor; Criminal Mistreatment II; Criminal Nonsupport; Kidnapping II; Possession of Weapons by Certain Felons; Racketeering Activity; Rape III; Robbery II; Robbery III; Sexual Misconduct; Stalking; Supplying Contraband; and Unlawful Use of a Weapon.

(c) CCD will consider the following crimes if they were committed 20 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Abuse of a Corpse I; Abuse of a Corpse II; Adult Using Minor in Commission of Controlled Substance Offense; Arson I; Assault I; Assault II; Compelling Prostitution; Criminal Mistreatment I; Criminally Negligent Homicide; Disseminating Obscene Material; Escape I; Failure to Report Child Pornography; Failure to Report as Sex Offender; Firearms Used in Felony; Incest; Intimidation I; Intimidation II; Kidnapping I; Manslaughter I; Manslaughter II; Possession of Destructive Device; Possession of Weapons by Inmates of Institutions; Promoting Prostitution; Publicly Displaying Nudity or Sex for Advertising Purposes; Robbery I; Sadomasochistic Abuse or Sexual Conduct in Live Show; Tampering with Drug Records; Theft by Extortion; Unlawful Manufacture of Destructive Device; Unlawful Paramilitary Activity; and Unlawful Possession of Machine Guns, Certain Short Barreled Firearms and Firearms Silencers.

(d) CCD will consider the following crimes regardless of the length of time since they were committed: Abandonment of a Child; Aggravated Murder; Child Neglect I; Child Neglect II; Displaying Obscene Materials to Minors; Encouraging Child Sexual Abuse I; Encouraging Child Sexual Abuse II; Encouraging Child Sexual Abuse III; Endangering the Welfare of a Minor; Exhibiting an Obscene Performance to a Minor; Furnishing Obscene Materials to Minors; Murder; Possession of Materials Depicting Sexually Explicit Conduct of a Child I; Possession of Materials Depicting Sexually Explicit Conduct of a Child II; Rape I; Rape II; Sending Obscene Materials to Minors; Sexual Abuse I; Sexual Abuse II; Sexual Abuse III; Unlawful Sexual Penetration I; Unlawful Sexual Penetration II; Sodomy I; Sodomy II; Sodomy III; and Using Child in Display of Sexually Explicit Conduct.

(e) These rules also apply to:

(A) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category I;

(B) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category I; and

(C) Any attempts or solicitations to commit any Felony or Misdemeanor crime listed in Category I.

(f) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

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(2) CCD has further determined that felonies and misdemeanors involving theft, fraud, or deception, crimes against the state and public justice, and major traffic violations may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual was convicted of a crime listed in Category II of this rule, CCD will seek to obtain and review information on all intervening circumstances and other background information related to criminal activity, subject to section (6) of this rule. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Central Background Registry.

- (a) The crimes in Category II include:
- (A) 162.025 Bribe Receiving;
 - (B) 162.065 Perjury;
 - (C) 162.155 Escape II;
 - (D) 162.205 Failure to Appear I;
 - (E) 162.235 Obstructing Governmental or Judicial Administration;
 - (F) 162.265 Bribing a Witness;
 - (G) 162.275 Bribe Receiving by a Witness;
 - (H) 162.285 Tampering with a Witness;
 - (I) 162.305 Tampering with Public Records;
 - (J) 162.325 Hindering Prosecution;
 - (K) 162.405 Official Misconduct II;
 - (L) 162.415 Official Misconduct I;
 - (M) 163.160 Assault IV;
 - (N) 163.190 Menacing;
 - (O) 163.195 Recklessly Endangering Another Person;
 - (P) 163.208 Assault on a Public Safety Officer;
 - (Q) 163.465 Public Indecency;
 - (R) 163.700 Invasion of Personal Privacy;
 - (S) 164.055 Theft I;
 - (T) 164.057 Aggravated Theft I;
 - (U) 164.215 Burglary II;
 - (V) 164.315 Arson II;
 - (W) 164.365 Criminal Mischief I;
 - (X) 165.013 Forgery I;
 - (Y) 165.022 Criminal Possession of a Forged Instrument I;
 - (Z) 165.032 Criminal Possession of a Forgery Device;
 - (AA) 165.055 Fraudulent Use of a Credit Card (over \$750);
 - (BB) 165.070 Possessing Fraudulent Communications Device;
 - (CC) 165.074 Unlawful Factoring of Credit Card Transaction;
 - (DD) 165.085 Sports Bribery;
 - (EE) 165.090 Sports Bribe Receiving;
 - (FF) 166.015 Riot;
 - (GG) 166.065 Harassment;
 - (HH) 166.090 Telephone Harassment;
 - (II) 166.190 Pointing Firearm at Another;
 - (JJ) 166.240 Carrying of Concealed Weapons;
 - (KK) 166.250 Unlawful Possession of Firearms;
 - (LL) 167.007 Prostitution;
 - (MM) 167.222 Frequenting a Place Where Controlled Substances are

Used;

- (NN) 167.320 Animal Abuse I;
- (OO) 167.322 Aggravated Animal Abuse I;
- (PP) 167.330 Animal Neglect I;
- (QQ) 411.630 Unlawfully Obtaining Public Assistance;
- (RR) 411.675 Submitting Wrongful Claim or Payment Prohibited;
- (SS) 411.840 Unlawfully Obtaining or Disposing of Food Stamp

Benefits;

- (TT) 471.410 Providing Liquor to Person under 21 or to Intoxicated Person;
- (UU) 475.992 Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses (controlled substance offenses);
- (VV) 475.993 Prohibited Acts for Registrants; Penalties;
- (WW) 475.994 Prohibited Acts Involving Records and Fraud;

Penalties;

- (XX) 475.995 Penalties for Distribution to Minors;
- (YY) 475.996 Crime Category Classification for Violation of ORS 475.992; Proof of Commercial Drug Offense;
- (ZZ) 475.999 Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School;
- (AAA) 811.140 Reckless Driving;
- (BBB) 811.182 Criminal Driving while Suspended or Revoked;
- (CCC) 811.540 Fleeing or Attempting to Elude Police Officer;

(DDD) 811.700 Failure to Perform Duties of Driver When Property Damaged (hit and run, property);

(EEE) 811.705 Failure to Perform Duties of Driver to Injured Persons (hit and run, injury); or

(FFF) 813.010 Driving Under the Influence of Intoxicants.

(b) CCD will consider the following crimes if they were committed 5 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Bribe Receiving; Bribe Receiving by a Witness; Bribing a Witness; Criminal Driving while Suspended or Revoked; Criminal Possession of a Forged Instrument I; Criminal Possession of Forgery Device; Failure to Appear I; Forgery I; Fraudulent use of a Credit Card (over \$750); Hindering Prosecution; Failure to Perform Duties of Driver to Injured Persons (hit and run, injury); Failure to Perform Duties of Driver When Property Damaged (hit and run, property); Obstructing Governmental or Judicial Administration; Criminal Driving while Suspended or Revoked; Official Misconduct I; Official Misconduct II; Perjury; Possessing Fraudulent Communications Device; Reckless Driving; Sports Bribe Receiving; Sports Bribery; Submitting Wrongful Claim or Payment Prohibited; Tampering with a Witness; Tampering with Public Records; Unlawful Factoring of Credit Card Transaction; Unlawfully Obtaining or Disposing of Food Stamp Benefits; Unlawfully Obtaining Public Assistance.

(c) CCD will consider the following crimes if they were committed 7 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Aggravated Animal Abuse I; Animal Abuse I; Animal Neglect I; Assault IV; Carrying of Concealed Weapons; Criminal Mischief I; Driving under the Influence of Intoxicants; Fleeing or Attempting to Elude Police Officer; Harassment; Menacing; Recklessly Endangering Another Person; Telephone Harassment; Theft I; and Unlawful Possession of Firearms.

(d) CCD will consider the following crimes if they were committed 10 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Aggravated Theft I; Arson II; Assault on a Public Safety Officer; Burglary II; Escape II; Invasion of Personal Privacy; Pointing Firearm at Another; Providing Liquor to Person Under 21 or to Intoxicated Person; Public Indecency; and Riot.

(e) CCD will consider the following crimes if they were committed 15 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Crime Category Classification for Violation of ORS 475.992/Proof of Commercial Drug Offense; Frequenting a Place Where Controlled Substances are Used; Prohibited Acts for Registrants; penalties; [(C)] Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses (controlled substance offenses); [(D)] Prohibited Acts Involving Records and Frauds; Penalties; and [(E)] Prostitution.

(f) CCD will consider the following crimes if they were committed 20 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry: Penalties for Distribution to Minors; and Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School.

(g) These rules also apply to:

(A) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category II;

(B) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category II; and

(C) Any attempts or solicitations to commit any Felony or Misdemeanor crime listed in Category II.

(h) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(3) CCD has determined that founded child protective services cases and firearm prohibition orders may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has a founded child protective services case or active firearm prohibition order, CCD will seek to obtain and review information related to the case, subject to section (6) of this rule. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Central Background Registry.

(4) If CCD determines that additional information is needed to assess a person's suitability to be enrolled in the Central Background Registry, the

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subject individual shall provide the requested information within the required timeframes. The additional information may include, but is not limited to, an evaluation or assessment by a physician, counselor or other qualified person, documents to determine positive identification of the subject individual, and court documents.

(5) If a subject individual is in a diversion program or similar agreement for any Category I or Category II crime, the subject individual must provide written documentation of compliance with the terms of diversion or similar agreement. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Central Background Registry.

(6) Factors to be considered in determining suitability, based on information available to CCD and information provided by the subject individual, include:

- (a) Types and number of incidences;
- (b) Passage of time since the incident occurred;
- (c) Circumstances surrounding the incident;
- (d) Intervening circumstances since the occurrence of the incident;

and

(e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children.

(7) CCD will not bar from enrollment in the Central Background Registry any subject individual because of the existence or contents of a juvenile record that has been expunged by the court.

[ED. NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS 657A.030

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 3-2004, f. 7-30-04 cert. ef. 8-1-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0060

Requirements of Requesting Agencies

Requesting agencies, as defined in OAR 414-061-0020(16), must comply with the following requirements:

(1) A requesting agency's application forms must contain a notice that employees and other persons who are subject individuals must be enrolled in the Central Background Registry and that employment is subject to fingerprinting and criminal records checks.

(2) A requesting agency may hire a subject individual on a probationary basis if the subject individual is conditionally enrolled in the Central Background Registry. A requesting agency may hire a subject individual on a permanent basis if the subject individual is enrolled in the Central Background Registry.

(3) A requesting agency shall not hire or continue to employ on a probationary or permanent basis an individual if the individual is not enrolled in the Central Background Registry or has been removed from the Central Background Registry and has not been re-enrolled.

(4) A requesting agency may allow a subject individual who is not yet enrolled or conditionally enrolled in the Central Background Registry to participate in training, orientation and work activities if the training, orientation and work activities are at a location other than the child care facility or are conducted at the facility when children are not present and the subject individual is not in contact with any children.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0065

Requirements for Reciprocal Agreement Programs

A reciprocal agreement program must enter into a reciprocal agreement with the Child Care Division that provides for sharing information on enrollment status of the individuals described in OAR 414-061-0020 (1)(g) and (h) respectively, and for the recovery of administrative, including direct and indirect costs incurred by the division from the participation in the agreement.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0070

Procedures for Conducting Oregon State Police Criminal Records Checks and Department of Human Services Child Protective Services Record Checks

(1) Subject individuals shall consent to a criminal records check of the Oregon State Police Computerized Criminal History (CCH) System and a

child protective services check at the time they request enrollment in the Central Background Registry.

(2) Central Background Registry enrollment forms shall contain notice that criminal records checks will be conducted as required by ORS 181.537 and 657A.030. The form shall also contain notice that child protective services checks will be conducted.

(3) Subject individuals shall provide all information required for a criminal records check and a child protective services check. Information includes:

(a) A properly completed and signed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry;

(b) For a subject individual who acknowledges a prior conviction of a criminal offense, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided by the individual; and

(c) On the application for enrollment in the Central Background Registry, CCD may request subject individuals to consent to the use of their social security numbers for criminal and child protective services records checks, for identifying enrollees in the Central Background Registry, for sharing information with other agencies to verify child care licensing status for child care payments, and for compiling statistical information for program planning and evaluation.

(4) CCD will review the criminal records information, child protective services information, and any additional information and will determine whether or not a subject individual may be enrolled in the Central Background Registry.

(5) Fees for each name checked through OSP CCH and child protective services systems are as follows:

(a) No charge for CCD employees; and

(b) All other requests for criminal record checks and child protective services checks and enrollment in the Central Background Registry will cost \$3 per person.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2006(Temp), f. & cert. ef. 3-16-06 thru 9-12-06; CCD 4-2006, f. 7-13-06, cert. ef. 7-14-06; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0080

Procedures for Conducting FBI Criminal History Checks

(1) An FBI criminal records check will be done on a subject individual whose OSP CCH record shows multi-state offender status, who has lived in Oregon less than 18 months or when CCD has information that the individual has committed a crime in another state.

(2) The subject individual shall supply to CCD the following information:

(a) One properly completed FBI fingerprint card, with printing in the "reason fingerprinted" block which reads "ORS 181.537/NCPA/VCA Child Care";

(b) Properly completed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry; and

(c) For a subject individual who acknowledges a prior conviction, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided under this rule.

(3) As part of the consent to a criminal records check, CCD may request the subject individual to consent to the use of his/her social security number in conducting the check.

(4) CCD will review the criminal records information and any additional information and will determine whether or not a subject individual may be enrolled in the Central Background Registry.

(5) CCD will charge the subject individual \$62 for an FBI records check, to be paid at the time of the request.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98 ; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 6-2004, f. & cert. ef. 12-17-04; CCD 3-2005(Temp), f. & cert. ef. 8-16-05 thru 2-12-06; CCD 5-2005, f. 12-29-05, cert. ef. 1-1-06; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

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414-061-0090

CCD Enrollment Procedures

(1) A subject individual shall be enrolled in the Central Background Registry if CCD has determined that the individual:

(a) Has provided all information and/or documents requested by CCD;

(b) Has no criminal or child protective services history or has dealt with the issues and provided adequate evidence of suitability;

(c) Has paid the applicable fee; and

(d) Has complied with the rules of CCD adopted pursuant to the Central Background Registry (OAR 414-061-0000 through 414-061-0120).

(2) Enrollment in the Central Background Registry shall expire two years from the date of enrollment, unless rescinded sooner, and may be renewed upon application to CCD, payment of the required fee and compliance with the rules adopted by CCD pursuant to the Central Background Registry (OAR 414-061-0000 through 414-061-0120).

(3) A subject individual who has been enrolled in the Central Background Registry will be notified by CCD of his or her enrollment and the enrollment dates. Such notification will not be sufficient evidence of enrollment for employment by a requesting agency.

(4) A subject individual may be conditionally enrolled in the Central Background Registry pending the results of an FBI criminal records check if the individual has been determined to be suitable based on OSP criminal records information and child protective services information.

(a) A conditionally enrolled subject individual who has been determined to be suitable based on FBI criminal records information shall be enrolled in the Central Background Registry.

(b) The two-year enrollment period will include the time the subject individual was conditionally enrolled.

(c) A conditionally enrolled subject individual who has been determined not to be suitable based on FBI criminal records information shall be removed from the Central Background Registry, according to the provisions of OAR 414-061-0110.

(d) A conditional enrollment will expire if the subject individual has not been enrolled in the Registry within one year of the conditional enrollment.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0100

CCD Denial Procedures

(1) A subject individual shall be denied enrollment in the Central Background Registry if the individual:

(a) Has been determined not suitable;

(b) Has failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant is out for a Category I or Category II crime with final disposition not yet reached;

(d) Has an open child protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) A subject individual may appeal CCD's determination not to enroll the subject individual in the Central Background Registry, pursuant to OAR 414-061-0120.

(3) A subject individual who has been denied enrollment in the Central Background Registry due to a determination of unsuitability shall not be eligible for enrollment in the Registry for 3 years from the date of denial.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0110

Removal and Suspension Procedures

(1) An individual enrolled in the Central Background Registry shall be removed or suspended from the Registry by CCD if, during the period of enrollment, the individual:

(a) Has been determined not suitable for enrollment in the Registry;

(b) Has failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant is out for a Category I or Category II crime with final disposition not yet reached;

(d) Has a founded child protective services case or an open child protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) CCD may immediately, and without prior hearing, remove or suspend a subject individual from the Central Background Registry when, in the opinion of CCD, such action is necessary to protect children from physical or mental abuse or a substantial threat to health and safety. Such action may be taken before an investigation is completed.

(3) CCD may reinstate a subject individual in the Central Background Registry if the condition(s) that resulted in the suspension is corrected.

(4) When a subject individual is removed or suspended from the Central Background Registry, CCD will notify the subject individual and the requesting agencies which have inquired about the subject individual's enrollment of the removal or suspension.

(5) A subject individual who has been removed from the Central Background Registry and has not subsequently been re-enrolled shall not be eligible for enrollment in the Registry for 3 years from the date of removal.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

414-061-0120

Rights for Review and Contested Case Hearings

(1) CCD shall conduct contested case hearings per ORS 183.413 to 183.470 and afford subject individuals the right to appeal a decision made by CCD that the subject individual may not be enrolled in or has been removed from the Central Background Registry. Subject individuals must notify CCD of their request for a contested case hearing not later than 14 calendar days from the date of service of the denial or removal notice.

(2) CCD has no jurisdiction in a contested case hearing over allegations that the criminal records information received from OSP or the FBI or child protective services information received from the Department of Human Services is inaccurate, incomplete or maintained in violation of any federal or state law. Therefore, a contested case hearing cannot be held by CCD for that purpose. Challenges to the accuracy or completeness of the information provided by the Department of State Police, the FBI and agencies reporting information to CCD must be made through those departments, bureaus or agencies and not through the contested case process.

(3) CCD is entitled to rely on the criminal records information supplied by OSP or the FBI or child protective services information supplied by the Department of Human Services until OSP, the FBI, or the Department of Human Services notifies CCD that information has been changed or corrected in a manner that would alter the CCD decision. If a subject individual has requested a contested case hearing, CCD will stay the hearing until the subject individual has been afforded a reasonable time to correct or complete the record or has declined to do so.

(4) To preserve the confidentiality of the records and the privacy of the subject individual, any contested case hearing will not be open to the public unless requested by the subject individual.

(5) A subject individual who is also an employee of the licensing unit of the Child Care Division and who is determined unsuitable for enrollment in the Central Background Registry may appeal the determination through either the contested case process or applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a determination through personnel rules, policies and collective bargaining provisions shall constitute an election of remedies as to the rights of the subject individual with respect to the disqualification determination and shall constitute waiver of the contested case process.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

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Rule Caption: Amends rules regarding Registered Family Child Care Homes.

Adm. Order No.: CCD 2-2010

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

ADMINISTRATIVE RULES

Rules Amended: 414-205-0000, 414-205-0010, 414-205-0020, 414-205-0040, 414-205-0065, 414-205-0075, 414-205-0170

Subject: Amends rules regarding civil penalties for Registered Family Child Care Homes. Revises definition pertaining to special needs children. Prohibits providers who have had certain negative actions taken from providing certain types of exempt child care.

Rules Coordinator: Courtney Brooks—(503) 947-1724

414-205-0000

Purpose

(1) Oregon Administrative Rules (OAR) 414-205-0000 through 414-205-0170 are the Child Care Division's minimum requirements for registering family child care providers. The purpose of these rules is to protect the health, safety, and well-being of children when cared for outside their own homes.

(2) Registration is required for persons who provide child care:

(a) On other than an occasional basis; and

(b) To more than three children from more than one family at any one time, other than the person's own children subject to the limits in OAR 414-205-0065; or

(c) To three or fewer children, even if from the same family if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(d) Provide care that is primarily educational for four hours or less per day and where no preschool age child is present at the facility for more than four hours per day if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(e) On an occasional basis by a person not ordinarily engaged in providing child care if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(f) To children from only one family other than the person's own family if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD.

(3) These rules do not apply to care provided:

(a) In the home of the child;

(b) To three or fewer children, not including the provider's own children subject to the limits in OAR 414-205-0065 except as provided in 414-205-0000(2)(c);

(c) To children from one family, not including the provider's own children except as provided in 414-205-0000(2)(f);

(d) On an occasional basis by a person not ordinarily engaged in providing child care except as provided in 414-205-0000(2)(e);

(e) By the child's parent, guardian, or person acting in place of a parent;

(f) By a person related to the child care children by blood, marriage, or adoption; or

(g) By a person who is a member of the child's extended family, as determined by the division on a case-by-case basis[.];or;

(h) By a person providing care for preschool children that is primarily educational for four hours or less per day and where no preschool age child is present at the facility for more than four hours per day, except as provided in 414-205-0000(2)(d).

(4) Any family child care provider exempt from registration may apply for registration.

(5) These rules apply only during the hours the provider is conducting the child care business.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.260 & 657A.330

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95;

CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96;

CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03; CCD

2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

414-205-0010

Definitions

(1) "Caregiver" means any person, including the provider, who cares for the children in the registered family child care home and works directly with the children, providing care, supervision and guidance.

(2) "Central Background Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(3) "Child Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, during a part of the 24 hours of the day, with or without compensation.

(4) "Child Care Child" means any child under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, who does not reside in the home and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(5) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(6) "CCD" means the Child Care Division of the Employment Department, or the Administrator or staff of the Division.

(7) "Civil Penalty" means a fine imposed by CCD on a provider for violation on these rules.(8) "Family" means persons related by blood, marriage, or adoption, or whose functional relationship (e.g., parent(s), custodian(s), guardian(s)) in exercising physical care and custody of the child(ren) is similar to those found in such associations.

(9) "Full-Time Child Care" means care provided to children not yet eligible for the first grade or above. One or more children may fill a full-time space in the home as long as the children are not in care at the same time.

(10) "Infant" means a child who is not yet walking.

(11) "New Application" means a registration application that has been filed by an applicant who has never had an active registration.

(12) "Night Care" means care given to a child who sleeps at the family child care home for all or part of the night.

(13) "Nonserious violation" means the division has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-205-0010 (25).

(14) "Occasional" means infrequently or intermittently, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(15) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(16) "Part-Time Child Care" means care provided to a child who meets the definition of a school-age child and is in care on days and hours school is not in session.

(17) "Preschool-Age Child" means a child 24 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year.

(18) "Provider" means a resident of the registered family child care home who is responsible for the children in care; is the children's primary caregiver; and the person whose name is on the certificate of registration.

(19) "Registered Family Child Care Home" means the residence of the provider, who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(20) "Registration" means the document a family child care provider is issued by the Child Care Division to operate a family child care home where care is provided in the family living quarters of the provider's home pursuant to ORS 657A.330 and OAR 414-205-0000 through 414-205-0170. Registration is limited to one provider at one address.

(21) "Renewal Application" means a registration application that has been filed by a currently registered family child care provider who wishes to continue registration.

(22) "Reopen Application" means a registration application that has been filed by an applicant whose registration is expired or closed, including those closures resulting from an address change.

(23) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from

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school, a child eligible to be enrolled in the first grade or above in the next school year, up to age 13.

(24) "Serious Complaint" means a complaint filed against:

(a) A registered family child care provider by a person who has alleged that:

- (A) Children are in imminent danger;
- (B) There are more children in care than allowed by law;
- (C) Corporal punishment is being used;
- (D) Children are not being supervised;
- (E) Multiple or serious fire, health or safety hazards are present in the home;

(F) Extreme unsanitary conditions are present in the home; or

(G) Adults are in the home who are not enrolled in the Child Care Division's Central Background Registry; or

(b) An individual providing child care, as defined by ORS 657A.250(4), who is not a registered family child care provider by a person who has alleged that there are more children in care than allowed by law.

(25) "Serious Violation" means the division has made a valid finding when assessing a serious complaint that alleges:

- (a) Children are in imminent danger;
- (b) There are more children in care than allowed by law;
- (c) Corporal punishment is being used;
- (d) Children are not being supervised;
- (e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the home; or

(g) Adults are in the home who are not enrolled in the Child Care Division's Central Background Registry; or

(h) An individual is providing child care as defined by ORS 657A.250(4) without registering with the Child Care Division of the Employment Department.

(26) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the registered family child care home in the temporary absence of the provider.

(27) "Usable Exit" means an unobstructed door or window through which the provider and the children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: Ch. 858, OL 1999 (SB 2240)

Stats. Implemented: Ch. 858, OL 1999 (SB 2240)

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 7-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

414-205-0020

Application for Registration

(1) The applicant must apply for registration on the form(s) supplied by CCD. The original form(s) must be submitted to CCD for processing.

(2) Persons submitting new applications must attend a family child care overview session prior to submitting their application to CCD.

(3) Persons interested in submitting an application must meet the training requirements outlined in OAR 414-205-0055.

(4) An application for registration is required:

- (a) For a new registration;
- (b) For renewing a registration; and
- (c) For reopening a registration.

(5) There is a non-refundable filing fee of \$30 for each application. If the provider submits documentation that the provider's family income is below 100% of the Federal Poverty Level, the fee may be reduced.

(6) All civil penalties must be paid in full.

(7) To determine if requirements are met, the applicant/provider may be required to supply additional information or permit CCD, a fire marshal, or a public health official to assess the home and/or review child care records.

(8) Providers must satisfactorily complete an on-site health and safety review conducted by CCD prior to issuance of a new, renewal or reopen registration. The review will ensure that the provider is in compliance with the rules related to health, safety and sanitation.

(9) If an application for renewal and payment of the required fee is received by CCD at least 30 days prior to the expiration date of the current registration, the current registration, unless officially revoked, remains in

effect until CCD has acted on the application for renewal and has given notice of the action taken.

Stat. Auth. ORS 657A

Stats. Implemented: ORS 657A.260, 657A.330 & 657A.440

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

414-205-0040

The Provider and Other Persons in the Home

(1) The registered provider and any substitute caregiver shall be at least 18 years old and in such physical and mental health as will not adversely affect a child in care.

(2) No one shall have access to child care children who has demonstrated behavior that may have a detrimental effect on a child. Residents of the home are considered to have access to the child care children even if they are not generally at home during child care hours.

(a) The applicant and other residents of the home 18 years of age or older must be enrolled in CCD's Central Background Registry prior to the issuance of a registration. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th birthday.

(b) Prior to another adult moving into the home, residing on a temporary basis in the home, visiting the home on a regular basis, or substituting for or assisting the provider, the provider must receive documentation from CCD that the individual is enrolled in the Central Background Registry. This does not apply to parents of children in care unless they are residing in the home or substituting for or assisting the provider.

(c) If additional information is needed to assess a person's ability to care for children or to have access to children, references, an evaluation by a physician, counselor, or other qualified person, or other information may be required by CCD.

(d) Any visitor to the home or other adult who is not enrolled in the Central Background Registry may not have unsupervised access to children.

(3) A caregiver substituting for the provider must:

(a) Be familiar with the requirements for registration and agree to comply with them;

(b) Be enrolled in the Central Background Registry prior to substituting for the provider; and

(c) Comply with all the requirements, except those in OAR 414-205-0055, placed on the provider in these rules.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.050, 657A.060, 657A.260 & 657A.330

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

414-205-0065

Children in Care

(1) A family child care provider may care for a maximum of 10 children under 13 years of age, or under age 18 if a child with special needs, at any one time. This includes the provider's own children, the child care children, foster children, and any other children for whom the provider is responsible.

(2) Of the 10 children under 13 years of age or under age 18 if a child with special needs, the provider may care for:

(a) A maximum of 6 children preschool age or younger, including the provider's own children, of which only 2 children may be under 24 months of age.

(b) In addition, there may be 4 school-age children.

(c) If there are fewer than 6 children preschool age or younger, there may be more school-age children, as long as there are no more than 10 children in the home at any one time.

(3) Other children, including but not limited to neighborhood children or friends of the provider's children, are included in the maximum number of 10 children allowed in care if their parents or other adults responsible for supervising them are not present in the home or are not directly supervising their own child(ren).

(4) Visiting children and their parents or others directly supervising them can be in the family child care home only on an occasional basis.

(5) No child younger than 6 weeks of age can be in care in a family child care home. This does not include the provider's child(ren).

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

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414-205-0075

Supervision of Children

The provider or a substitute caregiver is responsible for the children in care. The provider or substitute caregiver must:

- (1) Be within sight and/or sound of all children at all times;
- (2) Be aware of what each child is doing at all times; and
- (3) Be physically present when preschool age or younger children are playing outside unless the outside play area is fully fenced and hazard free. If the outside play area is fully fenced and hazard free, the provider must be within sight and/or sound of the children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

414-205-0170

Grievance Review and Sanctions

(1) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants/providers for family child care registration.

(2) Registration may be denied, suspended, or revoked if a provider fails to meet requirements, provide CCD with information requested, allow an inspection, or correct deficiencies.

(3) Any action taken by CCD to deny, suspend, or revoke registration may be reported to USDA Child Care Food Programs, child care resource and referral agencies, Children, Adults and Families, Office of Self-Sufficiency and Office of Safety and Permanency for Children.

(4) A registration may be suspended immediately when CCD believes children may be at risk of harm in the family child care home. Such action may be taken before an investigation is completed.

(a) A provider whose registration has been suspended must immediately notify, verbally or in writing, all parents of the suspension.

(b) A provider whose registration has been suspended must post the suspension in the home where it can be viewed by parents.

(5) Registration will be denied, suspended or revoked if the provider or other resident of the home has been removed or suspended from the Central Background Registry.

(6) If an individual listed in 414-205-0040(2)(a) or (b) has been charged with, arrested for, or a warrant is out for any crime which CCD has determined indicates behavior that would have a detrimental effect on a child, the provider's application will be denied or registration will be suspended or revoked until the charge, arrest, or warrant has been resolved.

(7) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has been convicted of or sentenced for offenses that would disqualify the individual from the Central Background Registry.

(8) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has a founded child protective services case or an open child protective services or law enforcement case that would disqualify the individual from the Central Background Registry.

(9) A provider whose registration has been revoked shall not be eligible to reapply for three years after the effective date of the revocation.

(10) A provider who violates these rules or the terms and conditions of registration under these rules may be subject to a civil penalty.

(a) For a serious violation, as defined in OAR 414-205-0010(23) a provider may be subject to a civil penalty of \$100 for the first violation after a written warning with time to correct is issued; and \$100 for each subsequent violation, not to exceed \$1,000 in a quarter for all rule violations.

(b) For other violations, a provider may be subject to a civil penalty of \$50 for the first violation after a written warning with time to correct is issued; \$100 for a second violation, and \$100 for each subsequent violation, not to exceed \$1,000 in a quarter for all rule violations.

(11) The provider has the right to appeal any decision to deny, suspend, or revoke registration or to impose a civil penalty, subject to the provisions of Chapter 183, Oregon Revised Statutes.

Stat. Auth.: ORS 657.610 & 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2005, f. & cert. ef. 4-29-05; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

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Rule Caption: Amends rules regarding Certified Child Care Centers and adopts rules for civil penalties.

Adm. Order No.: CCD 3-2010

Filed with Sec. of State: 6-29-2010

Certified to be Effective: 7-1-10

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Rules Adopted: 414-300-0415

Rules Amended: 414-300-0000, 414-300-0005, 414-300-0010, 414-300-0015, 414-300-0020, 414-300-0030, 414-300-0040, 414-300-0060, 414-300-0070, 414-300-0080, 414-300-0120, 414-300-0130, 414-300-0360, 414-300-0390, 414-300-0410

Subject: Amends rules pertaining to Certified Child Care Centers. Adds civil penalty provisions for serious and nonserious violations. Changes name of Criminal History Registry to Central Background Registry. Revises definition of special needs child. Prohibits providers who have had certain negative actions from providing certain types of exempt child care.

Rules Coordinator: Courtney Brooks—(503) 947-1724

414-300-0000

Applicability of Rules

(1) OAR 414-300-0000 through 414-300-0415 set forth the Child Care Division's (CCD) requirements for inspecting and certifying those child care facilities subject to Oregon laws governing child care facilities, ORS 657A.030, 657A.250 through 657A.310, 657A.350 through 657A.460 and 657A.990, that:

(a) Serve thirteen or more children; or

(b) Serve twelve or fewer children and are located in a building constructed as other than a single-family dwelling.

(c) Care for three or fewer children if the caregiver's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(d) Provides care for preschool children that is primarily educational for four hours or less per day and where no preschool age child is present at the facility for more than four hours per day if the caregiver's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(e) Provide care on an occasional basis by a person not ordinarily engaged in providing child care if the caregiver's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; or

(f) Provide care for children from only one family other than the person's own family if the caregiver's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD.

(2) These rules do not apply to child care facilities specifically excluded by law. Excluded facilities are those that:

(a) Provide care for preschool children that is primarily educational for four hours or less per day and where no preschool age child is present at the facility for more than four hours per day except as provided in 414-300-0000(1)(d); or

(b) Provide care for school-age children that is primarily a single enrichment activity, for eight hours or less a week; or

(c) Provide care in which youth development activities are provided to school-age children during hours that school is not in session and which does not take the place of a parent's care; or

(d) Provide care that is primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group; or. This exclusion applies only to the time engaged in the group athletic or social activities and if the children can come and go as they please; or

(e) Are operated by a school district, political subdivision of this state, or a government agency; or

(f) Are operated on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care except as provided in 414-300-0000(1)(e); or

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(g) Operate as a parent cooperative for no more than four hours a day; or

(h) Provide care while the child's parent remains on the premises and is engaged in an activity offered by the facility or in other nonwork activity; or

(i) Provide care for three children other than the person's own children except as provided in 414-300-0000(1)(c); or

(j) Provide care for children from only one family other than the person's own family except as provided in 414-300-0000(1)(f).

(3) If any court of law finds that any clause, phrase, or provision of these rules is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portion of these rules.

(4) For purposes of these rules, the determination of compliance or noncompliance shall be made by CCD.

(5) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants for child care certification or operators of centers.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0600; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0005

Definitions

The following words and terms, when used in OAR 414-300-0000 through 414-300-0415, have the following meanings:

(1) "Activity Area" means the area of the center that is available, during all the hours of operation, for the children's activities. This area excludes kitchens, hallways, toilet rooms, multi-purpose areas used by all children, lockers, office, storage areas, isolation quarters, staff room, furnace room, and that part of rooms occupied by heating stoves, or stationary equipment not used by children. Additional exclusions may apply for specific age groups.

(2) "Attendance" means children actually present in the center at any given time.

(3) "Capacity" means the total number of children allowed in the center at any one time, based on the available indoor and outdoor square footage, the number of toilets in the center and the number of qualified staff.

(4) "Caregiver" means any person in the child care center who works directly with the children, providing care, supervision, and guidance.

(5) "Central Background Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(6) "Certification" means the certification that is issued by CCD to a child care center pursuant to ORS 657A.280.

(7) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care; or

(e) By providers of medical services.

(8) "Child Care Area" means that indoor and outdoor area specifically certified for use by the center and includes all activity areas and other areas of the facility used to provide child care, such as kitchen, toilet rooms, offices, storage areas, and rooms used solely for napping or eating. This may be a specific portion or portions of the building and grounds of a large facility or one or more buildings at the same location.

(9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, for whom the child care center has supervisory responsibility in the temporary absence of the parent.

(10) "Child Care Center" or "Center" means a child care facility that is certified to care for thirteen 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.

(11) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(12) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(13) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation and includes the physical setting, administration, staff, equipment, program, and care of children.

(14) "Civil Penalty" means a fine imposed by CCD on a facility for violation of these rules.

(15) "Comparable group care program" means a program which has the following elements:

(a) Staff are supervised by knowledgeable professionals;

(b) Training of staff is provided or required annually;

(c) Group size is similar to a certified child care facility;

(d) Curriculum is age appropriate; and

(e) The program is not providing uncertified drop-in care.

(16) "Contracted services" means activities (e.g., tumbling, music) provided by an organization or program other than the center, where non-center staff come into the center or the children are transported to another location.

(17) "Director" means a person who is designated by the operator as director or administrator of the center and who meets the qualifications of director pursuant to OAR 414-300-0080.

(18) "Drop-in Care" means care provided on an unscheduled, irregular basis, any time of the day or night, exclusively for drop-in children in a child care center.

(19) "Enrollment" means all children registered to attend the center.

(20) "Group" means a specific number of children assigned to specific staff.

(21) "Guidance and discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(22) "Head Teacher" means the person, or persons, who is responsible for the development and implementation of the program of activities for each infant and toddler, preschool age, and school-age program in the center.

(23) "Infant" means a child who is at least six weeks of age but is not yet walking alone.

(24) "Infant and Toddler Age Program" means care and education provided in a center, or part of a center, to children between the ages of six weeks and thirty-six months.

(25) "Night Care" means care given to children who sleep at the child care center for all or part of the night.

(26) "Nonserious Violation" means CCD has made a valid finding when assessing complaint alleging a violation not listed in OAR 414-350-0010 (44).

(27) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(28) "Operator" means the person, group, corporation, partnership, governing body, association, or other public or private organization legally responsible for the overall operation of the center and who has the authority to perform the duties necessary to meet certification requirements. If the operator is other than the owner, an individual must be appointed as the operator by the owner.

(29) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(30) "Outbreak of a communicable disease" means two cases from separate households associated with a suspected common source.

(31) "Owner" means the person, group, corporation, partnership, governing body, association, or other public or private organization which holds the child care center as property and has a major financial stake in the operation of the center. The owner may or may not be active in the operation of the center; the owner may also be the operator.

(32) "Parent" means parent(s), custodian(s), or guardian(s), exercising physical care and legal custody of the child.

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(33) "Parent cooperative" means a child care program in which:

- (a) Care is provided by parents on a rotating basis;
- (b) Membership in the cooperative includes parents;
- (c) There are written policies and procedures; and

(d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

(34) "Preschool-Age Child" means a child who is 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year. For purposes of these rules, children attending kindergarten may be considered school-age children.

(35) "Preschool-Age Program" means care and education provided in a center, or part of a center, to children 36 months of age to attending kindergarten.

(36) "Program" means all activities and care provided for the children during their hours of attendance at the center.

(37) "Qualifying Teaching Experience" means:

(a) For infant/toddler and preschool age groups, 1,500 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period;

(b) For school-age groups, 600 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(38) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(39) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year, up to age 13. For purposes of these rules, children attending kindergarten may be considered school-age children.

(40) "School-Age Program" means care and education provided in a center, part of a center, school or other facility to children attending kindergarten or eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, eligible to be enrolled in the first grade or above in the next school year.

(41) "Serious complaint" means a complaint filed against:

(a) A certified child care center by a person who has alleged that:

- (A) Children are in imminent danger;
- (B) There are more children in care than allowed by certified capacity;

ty;

(C) Corporal punishment is being used;

(D) Children are not being supervised;

(E) Multiple or serious fire, health or safety hazards are present in the center;

(F) Extreme unsanitary conditions are present in the center; or

(G) Adults are in the center who are not enrolled in the Central Background Registry; or

(b) A facility providing child care, as defined ORS 657A.250(3), which is not a certified child care center by a person who has alleged that there are more children in care than allowed by law.

(42) "Site Director/Supervisor" means the person in charge of the facility at a site which is part of a larger multi-site program.

(43) "Site Coordinator" means the person responsible for coordinating over-all management and operation of a number of sites in a multi-site program.

(44) "Serious Violation" means the division has made a valid finding when assessing a complaint that alleges:

(a) Children are in imminent danger;

(b) There are more children in care than allowed by law;

(c) Corporal punishment is being used;

(d) Children are not being supervised;

(e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the center;

(g) Adults are in the center who are not enrolled in the Central Background Registry; or

(h) A facility is providing child care as defined in ORS 657A.250(4) which is not a certified child care center, by a person who has alleged that there are more children in care than allowed by law.

(45) "Staff" means an individual who is the director, an employee, or a volunteer who is in the center for more than a single activity.

(46) "Substitute Director" means the person in charge of the center during the hours of operation when the director is not on site.

(47) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of program requirements and children's needs, and accountability for their care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(48) "Teacher" means a caregiver who plans and implements daily activities for a designated group of children and who meets the qualifications of teacher pursuant to OAR 414-300-0100.

(49) "Teacher Aide" means a caregiver who works under the direct supervision of a teacher and who meets the qualifications of Aide I or Aide II pursuant to OAR 414-300-0110.

(50) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is 24 months of age but under 36 months of age.

(51) "Usable Exit" means an unobstructed door or window through which caregivers and children can evacuate the center in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0605; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 9-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0010

Application for a Child Care Certificate

(1) Unless exempted by Oregon laws governing child care facilities, no person or organization shall operate a child care center without a valid certification issued by the Child Care Division .

(2) Application for certification shall be made on forms provided by CCD.

(3) A completed application is required:

(a) For the initial certification;

(b) For the annual renewal of certification; and

(c) Whenever there is a change of owner, operator or location.

(4) The applicant shall complete and submit an application to CCD at least:

(a) 45 days before the planned opening date of a new center; and

(b) For renewal of certification, 30 days prior to the expiration of the certificate.

(A) If an application for renewal and payment of the required fee is received by CCD at least 30 days prior to the expiration date of the current certification, the current certification, unless officially revoked, remains in force until CCD has acted on the application for renewal and has given notice of the action taken.

(B) If an application for renewal and payment of the required fee is not received by CCD at least 30 days prior to the expiration date of the current certification, the certification will expire as of the date stated on the certificate and child care must cease at the facility, unless the renewal is completed before the expiration date.

(5) An application for certification shall be accompanied by a non-refundable filing fee.

(a) For the initial application, a change of owner/operator, the reopening of a center after a lapse in certification, or a change of location (except when a facility is forced to move due to circumstances beyond the control of the operator), the fee is \$100 plus \$2 for each certified space (e.g., the fee for a child care center certified to care for 30 children is \$60 + \$100 = \$160).

(b) For a renewal application, the fee is \$2 for each certified space.

(6) An application for certification must be completed by the applicant and approved by CCD within 12 months of submission or the application will be denied. If an application is denied, an applicant must submit a new application for certification.

(7) All civil penalties must be paid in full.

(8) A floor plan shall be submitted with the initial application and/or when a facility is being constructed or remodeled. The floor plan shall show

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dimensions of all rooms to be used (length and width), the planned use of each room, the placement and number of toilets, handwashing sinks, and diaper changing tables, and the location of the fixtures and plumbing in the kitchen. Similar plans shall be submitted to the environmental health specialist, the fire marshal and the buildings department prior to initial construction or remodel.

(9) If the facility is located within or attached to a building used for purposes other than child care, the floor plan shall describe the other activities which are carried out in adjoining rooms or buildings.

(10) If the applicant is a firm, association, corporation, public agency, or governmental entity, the application shall be signed by the chief executive officer or a person designated in writing to have the authority to sign for the applicant. If the applicant is a partnership, the application shall be signed by each partner.

(11) A management list shall be submitted with the application and updated annually. The list must specify who is responsible for each of the following:

- (a) Financial management;
- (b) Maintaining records;
- (c) Budgeting;
- (d) Policy Development;
- (e) Staff management, orientation and training;
- (f) Maintenance of building and grounds;
- (g) Meal planning and preparation;
- (h) Transportation of children, if provided; and
- (i) Ensuring the appropriateness of program activities according to age and development of the children.

(12) An operator shall provide verification to CCD that the center meets all applicable building codes and zoning requirements that apply to child care facilities:

- (a) Before the initial certification is issued; and
- (b) Whenever the facility is remodeled.

(13) The center shall be approved by an environmental health specialist registered under ORS chapter 700, or an authorized representative of the Health Division, and by a state or local fire marshal, before a certificate is issued by CCD.

(a) If structural, emergency or permit problems occur, CCD may request that the operator have the center inspected by the appropriate authority; and

(b) The operator is responsible for payment of any applicable fees for fire safety and sanitation inspections.

(14) Upon receipt of a completed application, a representative of CCD shall evaluate the center and all aspects of the proposed operation to determine if the center meets certification requirements (OAR 414-300-0000 through 414-300-0415).

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0610; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0015

Issuance of a Child Care Certificate

(1) A certification shall be issued by CCD when it has been determined the center is in compliance with OAR 414-300-0000 through 414-300-0415. There are two types of certifications. These are:

(a) A regular certification, which, except as provided in OAR 414-300-0010(4)(b)(A), is valid for no more than one year; and

(b) A temporary certification. A child care center may not operate under a temporary certification for more than 180 days in any 12-month period. A temporary certification is issued when:

- (A) The center is in compliance with most requirements;
- (B) There are no deficiencies identified by CCD that are hazardous to children; and

(C) The operator demonstrates an effort to be in full compliance.

(2) Certification is not transferable to any other location or to another organization or individual.

(3) Any changes in the conditions of certification shall be requested in writing to CCD and approved by CCD before the condition(s) of the current certification may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0615; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0020

Exceptions to Rules

(1) CCD may grant an exception to an individual rule (OAR 414-300-0000 through 414-300-0415) for a specified period of time when:

- (a) A requirement does not apply to the facility; or
- (b) The intent of the requirement can be met by a method not specified in the applicable rule.

(2) The operator shall request an exception to a rule on a form provided by CCD. The request shall include:

- (a) A justification for the requested exception; and
- (b) An explanation of how the center will meet the intent of the rule.

(3) No exception to a rule shall be granted:

- (a) If the requirement is established by statute; or
- (b) Unless the health, safety, and well-being of the children are ensured.

(4) Exceptions may not be implemented until approval is received from CCD.

(5) The granting of an exception to a rule shall not set a precedent, and each request shall be evaluated on its own merits.

(6) CCD may withdraw approval of an exception at any time, if deemed necessary to ensure the health, safety and well-being of the children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0618; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0030

General Requirements

(1) The operator shall display the following near the entrance, or in some other area of the center, where they may be viewed by parent(s) of children in care:

- (a) The most current certification issued by CCD;
- (b) Name of the director and/or the substitute director;
- (c) Notice of planned field trips away from the immediate neighborhood, showing the date and place of each excursion;
- (d) The current week's menu for all meals and snacks, if meals are provided by the center. Any substitution shall be recorded on the menu;
- (e) A notice that the items identified in section (2) of this rule are available for review on request;
- (f) Information on how to report a complaint to CCD regarding certification requirements;
- (g) Notice that custodial parents have access to the center during the hours of operation and without advance notice; and
- (h) Notice of center closures (vacation days, holidays, etc.).

(2) The operator shall have available for review on request:

(a) A copy of OAR 414-300-0000 through 414-300-0415, Rules for the Certification of Child Care Centers; and

(b) The most recent CCD, sanitation, and fire safety inspection reports.

(3) The operator shall report to CCD:

(a) An accident at the center resulting in the death of a child, within 48 hours after the occurrence;

(b) Injuries to a child at the center which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence;

(c) Damage to the building which affects the operator's ability to comply with these requirements, within 48 hours after the occurrence; and

(d) Any change in director prior to the director being on site. Such prior notification must include the replacement person's qualifications for the position and documentation that the person is enrolled in the Central Background Registry. An e-mail or a phone call, followed by written documentation, or a FAX will serve as notification.

(4) Information provided to CCD on applications, in records or reports, or any other written or verbal communication, shall be current, complete, and accurate.

(5) Staff shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050), to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

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(6) The child care center shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(7) The following information shall be in writing and made available to staff, CCD, and to parent(s) at the time of enrollment:

(a) Name, business address, and business telephone number of the person(s) who have immediate responsibility for the daily operation of the center;

- (b) Guidance and discipline policy;
- (c) Arrival and departure procedures;
- (d) Emergency plan, as specified in OAR 414-300-0170(3);
- (e) Procedures for field trips; and
- (f) Information on transportation, when provided by the center;

(8) Representatives of all agencies involved in certification and custodial parents shall have immediate access to all parts of the center during hours of operation. CCD staff shall have the right to enter and inspect the center, including access to all staff, records of children enrolled in the center, and all records and reports related to the center operation regarding compliance with these rules.

(9) The center shall comply with the Health Division's administrative rules relating to:

(a) Immunization of children (OAR 333-050-0010 through 333-050-0140);

- (b) Reporting communicable diseases (OAR 333-019-0000);
- (c) Child care restrictable diseases (OAR 333-019-0010); and
- (d) Dishwashing (OAR 333-150-0000).

(10) A center shall have written health policies and procedures approved by the Health Division or the county health department which cover, but are not limited to, the following:

- (a) Storage and handling of food;
- (b) Diaper changing and disposal, if applicable. The diaper changing procedure must be posted in the diaper changing area;
- (c) Bathing infants, if the center cares for infants;
- (d) Care of bed linen;
- (e) Hand washing procedures. The hand washing procedures must be posted at hand washing sinks; and
- (f) Serving formula, storage and handling of bottles, and feeding infants, if the center cares for infants.

(11) Parental request or permission to waive any of the rules for the certification of child care centers does not give the center permission to do so.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 5-1989, f. & cert. ef. 3-15-89; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0620; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0040

Enrollment

(1) Children shall be admitted only in accordance with the conditions of the certification, including, but not limited to, capacity, hours of operation, age range, and special conditions.

(2) All children visiting the center on a regular basis will count in capacity. Children attending with a non-staff parent do not count as enrolled as long as the parent remains with and is responsible for non-enrolled children.

(3) As required by state and federal civil rights laws and the Americans with Disabilities Act (ADA), the center shall not discriminate against any child on the basis of race, religion, color, national origin, gender, marital status of parent, or because of a need for special care.

(a) Refusal by the operator to care for a child with a need for special care because of lack of related skills and degree of competence, or because of structural barriers in the center, shall not in itself establish a prima facie case of discrimination. The decision to enroll/not enroll a child shall be made on an individual basis after the child's child care needs have been assessed using information from parents and professionals who are knowledgeable about the specific disability. The operator shall record the assessment that was made for each [special needs] child with special needs.

(b) If a child with special needs is enrolled who needs a specific plan for caring for that child, such a plan shall be developed in writing between center staff, parent(s), and if necessary, outside specialists. All staff who come in contact with that child shall be fully aware of the plan.

(4) The operator shall obtain the following information in writing from parent(s) of each child before admission. The information shall be kept current at all times.

- (a) Name and birth date of child;
- (b) Date child entered care;
- (c) Name(s), home and business address(es) and telephone number(s) of the custodial parent(s);
- (d) The school attended by a school-age child;
- (e) Name and telephone number of child's medical provider(s) and dentist, if applicable;
- (f) Name and telephone number of person to be called in an emergency if the parent cannot be located; and
- (g) Name and telephone number of person(s) to whom the child may be released.

(5) The operator shall obtain the following information in writing from parent(s) of each infant and toddler before admission:

- (a) Schedule of feeding;
- (b) Types of food introduced and timetable for new foods;
- (c) Toilet and diapering schedule;
- (d) Sleep schedule;
- (e) Child's way of communicating and being comforted; and
- (f) Developmental and health history of any problems that could affect the child's participation in child care.

(6) The operator shall obtain the following written authorizations from parent(s) of each child before admission:

(a) Permission for the center to obtain emergency medical treatment for the child. The emergency medical release shall be:

- (A) On a form accepted by the medical treatment facility used by the operator for emergency medical services; and
- (B) Immediately accessible to all staff.

(b) Permission for the center to call an ambulance or take a child to an available physician or medical treatment facility; and

- (c) Approval when applicable for:
 - (A) Participation in field trips; and
 - (B) Participation in swimming or wading activities, both on and off the premises of the center.

(7) A center shall maintain separate information and authorization forms on each child in care.

(8) An opportunity shall be given for each child, with his/her parent(s), to have a pre-placement visit to the center and for the center staff to exchange information with the parent(s).

(9) No child under six weeks of age shall be enrolled in a center.

[Publications: Publications referenced are available from the agency.]
Stat. Auth. ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0622; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0060

Record Keeping

(1) The operator shall keep all records, except those specified in OAR 414-300-0060(1)(d)(F), for at least two years, and staff and children's records for two years after termination of employment or care. These records shall be available at all times to CCD:

(a) Complete and current information on each child as required in OAR 414-300-0040(4) and (6);

- (b) Records of daily attendance showing:
 - (A) The date of employment, time of arrival and departure, and room assignment for each staff; and
 - (B) The date, name of each child in attendance, and time of arrival and departure. The record must show the children in attendance at any given time;

(c) The current day's attendance record shall be maintained in the child's classroom in paper format.

(c) Personnel record for each staff, which shall include:

- (A) Name, address and telephone number of staff;
- (B) Position in center;
- (C) Written verification (such as transcripts, payroll records, time sheets, documented resumes, notes regarding telephone conversations, etc.) that the person possesses the qualifications for the position;
- (D) Verification that the staff is currently enrolled in the Central Background Registry;
- (E) Statement of the staff's duties;

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(F) Record of current health-related training, such as CPR, Life Support, Life Saving, and First Aid, and current food handler certifications, as appropriate;

(G) Driving record, driver's license number and expiration date if the person is to transport children; and

(H) Documentation of dates and participation in orientation, training, and staff development activities, as required in OAR 414-300-0120.

(d) A written record of:

(A) A death of or injury to a child, as specified in OAR 414-300-0030(3);

(B) Dates and times of the practices of emergency procedures;

(C) Child abuse reports made to the Department of Human Services Child Welfare (DHS) or a law enforcement agency;

(D) Authorizations to administer medication to a child, as specified in OAR 414-300-0230(1)(a);

(E) Medications dispensed, as specified in OAR 414-300-0230(1)(d);

(F) Meals and snacks provided by the center for the previous three weeks;

(G) The program of activities for each group of children, as specified in OAR 414-300-0300; and

(H) The daily schedule for each group of children, as specified in OAR 414-300-0290.

(2) The operator shall allow custodial parent(s), upon request, to review records and reports, except for child abuse reports, maintained on their own children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0626; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0070

General Requirements

(1) The operator shall establish a system of job descriptions, staff selection, and staff evaluation that ensures that staff:

(a) Have competence, sound judgment, and self-control in working with children;

(b) Are mentally, physically, and emotionally capable of performing assigned duties related to child care; and

(c) Have the required training and/or experience for the position for which they are hired.

(2) There shall be a person or persons on the staff who meet(s) the qualifications of director (OAR 414-300-0080) and head teacher (OAR 414-300-0090). A person assigned the duties of the position must meet the qualifications of the position.

(3) Notwithstanding OAR 414-300-0120(3), there shall be at least one person in the center at all times who has current certification in first aid and CPR.

(4) Any staff with evidence of a child care-restrictable disease, as defined in OAR 333-019-0010, symptom of physical illness, as defined in OAR 414-300-0220(1), or mental incapacity that poses a threat to the health or safety of children shall be relieved of his/her duties.

(5) If there is evidence which casts doubt on the physical or mental competence of a person to care for children or have access to children, CCD may require that the operator provide CCD with an evaluation, or other information, as specified by CCD.

(6) No one shall have access to child care children or be in the center during child care hours who has demonstrated behavior that may have a detrimental effect on a child. This includes any individual in the center who has or may have unsupervised access, however brief, to child care children (i.e., the owner, the operator, all child care staff, maintenance staff who work on-site during hours of operation, volunteers who may be left alone with children, etc.). This does not apply to parents of children in care when they drop off and pick up their children:

(a) The operator, all child care staff and others as described in section (6) above 18 years of age or older shall be enrolled in CCD's Central Background Registry prior to the issuance of an initial or renewal certification;

(b) Prior to any new staff, including a director, or individual being on-site at the center during child care hours, the staff/individual shall be enrolled in the Central Background Registry and the center shall receive verification from CCD of the enrollment. This does not apply to parents of children in care unless they are assisting in the provision of child care. Volunteers may be exempt from this rule, as specified in OAR 414-300-0070(7);

(c) When a center is notified by CCD that a staff member or other individual has been removed from the Central Background Registry, the center shall not permit the staff member or other individual to have access to child care children;

(d) If any person listed in section (6) and section (6)(a) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which CCD has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification will be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in, or have access to children in the center;

(e) If a criminal record check shows that a warrant has been issued for any person checked, CCD will inform the originating law enforcement agency of the person's name, address, and telephone number.

(7) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Central Background Registry;

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Central Background Registry;

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the center must have a written policy to this effect, the policy must be known to all center staff and volunteers, and the volunteers do not have to be enrolled in the Central Background Registry.

(8) No person shall smoke or use smokeless tobacco in the child care area during child care hours. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

(9) Alcohol and non-prescribed controlled substances shall not be consumed or stored in the child care area during child care hours. Staff or volunteers who appear to be under the influence of alcohol or non-prescribed controlled substances shall not be in the center during child care hours.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.060

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CSD 4-1991, f. & cert. ef. 3-7-91; CSD 8-1991, f. & cert. ef. 7-1-91; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0630; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0080

Director — Qualifications and Duties

(1) The director shall:

(a) Be at least 21 years of age; and

(b) Have:

(A) At least one year of training and/or experience in management and supervision of adults; and

(B) Have knowledge of child development for the primary ages served in the center, as evidenced by a combination of professional references, education, experience or training; or

(C) Documentation of attaining at least step nine in the Oregon Registry, or

(c) Have:

(A) One year of training and/or experience in management and supervision of adults OR have knowledge of child development for the primary ages served by the center as evidenced by a combination of professional references, education, experience or training; and

(B) A plan, approved by CCD, that shows how the missing component in (A) above will be addressed and how the program will be operated until the director has obtained the training, experience or knowledge.

(2) The director of the center shall be accountable for:

(a) Administrative functions, including, but not limited to: financial management; maintaining records; budgeting; policy development; ensuring the appropriateness of program activities according to age and developmental levels of children; staff orientation; management and training; maintenance of buildings and grounds; meal planning and preparation; and transportation, if provided; and

(b) Operating the center in compliance with certification requirements (OAR 414-300-0000 through 414-300-0415).

(3) If head teacher qualifications (OAR 414-300-0090) are met by the director, that person may serve as head teacher for the age range of children for which she/he is qualified if she/he works full-time in the center:

(a) If the center is certified for less than 40 children, the director may serve as head teacher and have regular teaching duties, if qualified;

(b) If the center is certified for 40 or more children, the director may serve as head teacher, but shall have no regular teaching duties.

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(4) A director responsible for a center certified for fewer than 100 children shall be in the center at least one-third of the hours that the center is in operation. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences. The time on-site must include time spent directly observing staff and children.

(5) A director responsible for a center certified for more than 100 children can be responsible for only one site. The director shall be in the center at least half of the hours that the center is in operation. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences. The time on-site must include time spent directly observing staff and children.

(6) The director, or a substitute director, shall be on the premises during all hours of operation.

(7) The substitute director shall:

(a) Meet at least the qualifications of a teacher;

(b) Be familiar with the certification requirements;

(c) Be authorized, able, and available to correct a deficiency that might be an immediate threat to children's health or safety; and

(d) Have on file documentation of an orientation and training in these administrative rules and the functions and duties of a director.

(8) Whenever a director is absent from the center, the name of the substitute director shall be posted in the center, as required in OAR 414-300-0030(1).

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0632; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-1995; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0120

Staff Training

(1) All new staff shall receive an orientation within the first two weeks of employment. Orientation shall ensure that staff are familiar with the contents of the orientation, as described below, and shall include, but is not limited to:

(a) Individual responsibilities in the event:

(A) The building must be evacuated (e.g., fire);

(B) An emergency requires staff and children to remain inside under unusual circumstances (e.g., power outage, environmental hazard); or

(C) A child or staff is injured or becomes ill;

(b) These requirements (OAR 414-300-0000 through 414-300-0415);

(c) The center policies, as required in OAR 414-300-0030; and

(d) Procedures for reporting suspected child abuse or neglect.

(2) The operator shall have documentation for each staff person of the date and type of orientation received and the person providing the orientation.

(3) Within the first 90 days of employment, all staff who function as teachers and count in staff/child ratios, with the exception of substitute teachers, shall:

(a) Complete training on recognizing and reporting child abuse and neglect or have documentation of having completed such training; and

(b) Complete first aid and CPR training or have current certification in first aid and CPR on file. First aid and CPR training must be kept current during employment at the center. First aid training shall include the following components: bleeding; burns; poisoning; choking; injuries; shock; seizures; sprains and breaks; dental emergencies; and head injuries.

(4) Key people in food preparation must have food handler certification, pursuant to ORS 624.570, within 30 days of employment or have current certification on file. Food handler's training must be kept current during employment at the center. Key people include cooks, kitchen staff who handle food, and classroom staff who serve meals from a communal source.

(5) The director, head teacher, and all teachers shall participate yearly in at least 15 clock hours of training or education related to child care, of which at least eight clock hours shall be in child development or early childhood education:

(a) A head teacher whose qualifications for the position are based solely on work experience shall emphasize training in child development and early childhood education for the first two years of employment;

(b) Training may include correspondence courses, conferences, workshops, or audiovisual programs.

(c) A planned reading program of professional materials may count for up to 6 hours of the fifteen clock hours of training and must include a written assessment of reading materials completed by each participating staff person.

(d) The center shall record each person's training showing the subject matter, the date completed, and the number of clock hours of training in each certification year.

(6) During the first year of employment, a staff person may count orientation, first aid and CPR, food handler's training, if applicable, and child abuse and neglect training as part of the 15 clock hours of training.

(7) During subsequent years of employment, a staff person may count 5 hours of first aid and CPR training or food handler's training as part of the 15 clock hours of training.

(8) Staff meetings shall not count as training.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0637; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0130

Staff/Child Ratios and Group Size

(1) The number of caregivers and group size shall be determined by the number and ages of the children in attendance.

(2) The maximum number of children in a group and the ratio of caregivers to children specified in Table 3A of this rule shall apply, except that:

(a) When all toddler, preschool and school-age children are at rest, the situation permits, and the room is arranged so all children are supervised, there may be one teacher or Aide II supervising the resting room. As children awaken and become active, additional staff shall be added to return ratios to those in Table 3A. Sufficient staff to meet the required ratio shall be in the facility and able to be summoned by the caregiver without leaving the resting room; and

(b) Maximum group size shall not apply to field trips, outdoor play, planned large group activities, napping and eating. Staff/child ratios shall apply to these activities.

(c) Centers with certification in effect on July 15, 2001, shall comply with age groupings, staff/child ratios and group size in either Table 3A or Table 3B for as long as the facility is continuously used for child care, under the following conditions:

(A) The center must choose to operate under Table 3A or Table 3B; centers shall not operate under a combination of both;

(B) If centers wish to change from operating under one set of ratios to operating under the other set of ratios, the change shall occur at the time of certification renewal; and

(C) Centers may change options only twice.

(3) Children shall at all times have the full attention of the appropriate number of staff. Children shall be within sight and sound of a caregiver at all times, except as specified below.

(a) School-age children shall be within sight and/or sound of staff at all times, and staff shall be near enough to children to respond when needed. Children out of direct visual contact shall be monitored regularly and frequently and must be in approved activity areas. A written plan regarding the use and monitoring of these activity areas must be approved by CCD.

(b) School age programs with toilet facilities or activities off-site shall have a written plan, approved by CCD, to assure accountability for all children.

(4) At least one caregiver who meets the qualifications of a teacher (OAR 414-300-0100) shall supervise each group of children.

(5) In a mixed group of older toddler, preschool and school-age children, the number of caregivers shall be determined by the age of the youngest child in the group.

(6) If there are four or fewer children of any age in care for 45 minutes or less directly after opening or directly before closing, OAR 414-300-0300(10) does not apply and infants and younger toddlers may be included with older children. The staff shall be teacher-qualified in one of the represented age groups and the staff/child ratio must be 1:4.

(a) Each age group must have age appropriate activities, equipment and toys available for use; and

(b) If infants or toddlers are part of the multiple age group, a diaper changing area must be located in the room being utilized for care.

(7) Any time there are children in care,

(a) There shall be a staff person and one other adult on site. The other adult shall be enrolled in the Central Background Registry and shall be physically available to be called on by staff, if needed; or

(b) There shall be a written plan, approved by CCD, for a second caregiver to be available within 5 minutes for emergencies. The name and telephone number of the emergency back-up shall be known to all staff who work alone.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 657A.260

ADMINISTRATIVE RULES

Stats. Implemented: ORS 657A.260.
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0639; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0360

Night Care

(l) A center providing night care to children shall meet all the requirements for child care centers contained in OAR 414-000-0300 through 414-300-0415, except for 414-300-0150, 414-300-0290 through 414-300-0320, and 414-300-0340(2)(e). In addition, the center shall comply with the following requirements:

(a) Staffing:

(A) During the hours of night care, the required staff/child ratio shall be maintained in the center.

(B) There shall be at least two staff persons present and awake at all times.

(C) All sleeping and awake children shall be within sight and sound of staff at all times. Audio and/or video monitoring devices shall not substitute for sight and sound supervision.

(b) Safety:

(A) No one shall be allowed to enter except authorized persons including, but not limited to, the child's family, persons authorized by the parent(s), staff, CCD certification representatives, fire safety officials, and environmental health specialists.

(B) The center shall provide staff training for evacuating sleeping children in an emergency.

(C) There shall be emergency lighting in each room used by children.

(c) Activities:

(A) The center shall provide a program of activities for children according to their ages, interests, and abilities.

(B) There shall be quiet time activities, such as story-time, games, arts and crafts, and reading, for each child arriving before bedtime.

(C) There shall be toys and equipment available to meet the needs of children in night care.

(D) There shall be an activity area away from sleeping children where the awake children may engage in activities.

(d) Sleeping Arrangements:

(A) Space shall be arranged so that children may go to sleep at various times, based on their age and need for rest.

(B) All sleeping rooms used by children shall have two usable exits. A sliding door or window that can be used to evacuate children may be considered a usable exit.

(C) Each child who spends the majority of his/her sleeping hours per night in night care shall have a bed and mattress, or another sleeping arrangement that provides adequate support to a child's body with a water-proof cover and of a size appropriate to the age of the child.

(i) Cribs shall comply with OAR 414-300-0215(1).

(ii) The upper level of bunk beds shall not be used for children under 10 years of age.

(iii) The upper level of bunk beds may be used for children 10 years or older if a bed rail and safety ladder are provided.

(D) Each child who does not spend the majority of his/her sleeping hours in night care shall have a crib, cot, or mat with bedding that complies with OAR 414-300-0210 and 414-300-0215.

(E) Children who attend the center for the evening hours, but do not spend the whole night, shall have an opportunity to sleep, if needed.

(F) No children shall share a bed.

(G) Each sleeping arrangement occupied by a child shall have sheets, pillows, pillowcases, and blankets.

(H) Bed linens shall be changed upon change of occupant and at least once a week.

(e) Personal Hygiene:

(A) Each child shall have an individual washcloth, towel, toothbrush, comb or brush, and sleepwear.

(B) Children staying the night shall have the opportunity to bathe and brush their teeth.

(i) There shall be at least one bathtub or shower for each 15 children. Bathtubs and showers shall be equipped to prevent slipping.

(ii) When bathing, showering, or brushing teeth, children shall be supervised by staff.

(iii) Privacy between the sexes shall be maintained for school age children.

(iv) Tubs or showers shall be cleaned after each use. If visibly soiled, tubs and showers must be cleaned prior to sanitizing.

(v) Glass shower doors or glass tub enclosures shall be constructed of safety glass.

(f) Meals and Snacks:

(A) Each child present at the time the evening meal is scheduled shall be served a meal.

(B) A nutritious nighttime snack (OAR 414-300-0270(4)) shall be available to all children in care.

(C) Each child present at the time breakfast is scheduled shall be served breakfast, unless the parent(s) specifies otherwise.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0680; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0390

Drop-in Care

(1) A Drop-In Center shall meet all the requirements for child care centers contained in OAR 414-300-0000 through 414-300-0415, except for 414-300-0150.

(2) The center shall comply with the following requirements which apply to Drop-In Care provided exclusively for drop-in children as a single primary service or as a separate component of a child care center.

(a) The child care area used for Drop-In Care shall not be used by the children from any other component of the center.

(b) Staff assigned to provide Drop-In Care shall not be responsible for children from any other component of the center at the same time.

(c) The planned attendance for a child in Drop-In Care shall not exceed two and one half full days per week, or twenty-five hours per week.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0686; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0410

Suspension of Certification

(1) CCD may immediately, and without prior notice, suspend the child care certification when, in the opinion of CCD, such action is necessary to protect the children from physical or mental abuse or a substantial threat to health, safety or well-being. Such action may be taken before an investigation is completed.

(a) An operator whose certification has been suspended must immediately notify, verbally or in writing, all parents of the suspension.

(b) An operator whose certification has been suspended must post the suspension on the main entry door where it can be viewed by parents and others.

(2) The operator has the right to appeal any decision to suspend the certification, subject to the provisions of chapter 183, Oregon Revised Statutes.

(3) If the operator does not request a hearing and the conditions which resulted in suspension have not been corrected, the certification shall be revoked (OAR 414-300-0400).

(4) If necessary to protect children, CCD may give public notice of suspension action taken. The type of notice will depend on individual circumstances.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0690; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

414-300-0415

Civil Penalty

(1) A facility that violates these rules or the terms and conditions of certification under these rules may be subject to a civil penalty.

(2) For a serious violation, as defined in OAR 414-300-0005(44) a facility may be subject to a civil penalty of \$100 for the first violation after a written warning with time to correct is issued; and an additional \$100 for each subsequent violation up to \$500 per violation, not to exceed \$1,000 in a quarter for all rule violations.

(3) For other violations, a facility may be subject to a civil penalty of \$75 for the first violation after a written warning with time to correct is issued, \$150 for a second violation, \$250 for a third violation and an additional \$100 for each subsequent violation up to \$500 per violation, not to exceed \$1,000 in a quarter for all rule violations.

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(4) The facility has the right to appeal any decision to impose a civil penalty, subject to the provisions of chapter 183, Oregon Revised Statutes.
Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10

Rule Caption: Amends rules regarding Certified Family Child Care Homes and adopts rules for civil penalties.

Adm. Order No.: CCD 4-2010

Filed with Sec. of State: 6-29-2010

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Rules Adopted: 414-350-0405

Rules Amended: 414-350-0000, 414-350-0010, 414-350-0020, 414-350-0030, 414-350-0040, 414-350-0050, 414-350-0080, 414-350-0090, 414-350-0100, 414-350-0110, 414-350-0400

Subject: Amends rules pertaining to Certified Family Child Care Homes. Adds civil penalty provisions for serious and nonserious violations. Changes name of Criminal History Registry to Central Background Registry. Revises definition of special needs child. Prohibits providers who have had certain negative actions from providing certain types of exempt child care.

Rules Coordinator: Courtney Brooks—(503) 947-1724

414-350-0000

Applicability of Rules

(1) OAR 414-350-0000 through 414-350-0405 set forth the Child Care Division's (CCD) requirements for the inspection and certification of certified family child care homes subject to Oregon laws governing child care facilities (ORS 657A.030, 657A.250 through 657A.310, 657A.350 through 657A.460, and 657A.990) that:

(a) Care for no more than 16 children; and

(b) Are located in a building constructed as a single-family dwelling; and

(c) Care for three or fewer children if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; and

(d) Provide care for preschool children that is primarily educational for four hours or less a per day and where no preschool age child is present at the facility for more than four hours per day if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD; and

(e) That provide care on an occasional basis by a person not ordinarily engaged in providing child care if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD.

(f) That provide care for children from only one family other than the person's own family if that person's enrollment in the Central Background Registry has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by CCD.

(2) The following child care facilities are specifically excluded by law and are not required to comply with these rules:

(a) A registered family child care home;

(b) A facility providing care for preschool children that is primarily educational for four hours or less per day and where no preschool age child is present at the facility for more than four hours per day except as provided in 414-350-0000(1)(d);

(c) Care provided in the home of the child; or

(d) A facility that provides care on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care except as provided in 414-350-0000(1)(e); or

(e) A facility that provides care for no more than three children other than the person's own children except as provided in 414-350-0000(1)(c);

(f) A facility that provides care for children from only one family other than the person's own family except as provided in 414-350-0000(1)(f).

(3) If any court of law finds that any clause, phrase, or provision of these rules is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portion of these rules.

(4) For purposes of these rules, the determination of compliance or noncompliance shall be made by CCD.

(5) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants for child care certification or operators of certified family child care homes.

(6) These rules apply only during the hours the provider is conducting the certified family child care business.

Stat. Auth.: ORS 657A

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0700; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

414-350-0010

Definitions

The following words and terms, when used in OAR 414-350-0000 through 414-350-0405, have the following meanings:

(1) "Activity Area" means the area of the home that is available, during all the hours of operation, for the children's activities. This area excludes the food preparation area of the kitchen, bathrooms, storage areas, and those parts of rooms occupied by heating stoves, furniture and stationary equipment not used by children.

(2) "Attendance" means children actually present in the home at any given time.

(3) "Capacity" means the total number of children allowed in the certified family child care home at any one time, based on the available square footage, the ages of the children to be served and the total number of staff.

(4) "Caregiver" means any person, including the provider, who cares for the children in the certified family child care home and works directly with the children, providing care, supervision and guidance.

(5) "Central Background Registry" means CCD's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(6) "Certification" means the certification that is issued by CCD to a certified family child care home pursuant to ORS 657A.280.

(7) "Certified Family Child Care Home" or "Home" means: 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.

(8) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care;

(e) By providers of medical services; or

(f) By a person who is a member of the child's extended family, as determined by the division on a case-by-case basis.

(9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(10) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(11) "CCD" means the Child Care Division of the Employment Department or the Administrator or staff of the Division.

(12) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child

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play school, before and after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.

(13) "Civil Penalty" means a fine imposed by CCD on a provider for violation of these rules.

(14) "Enrollment" means all children registered to attend the certified family child care home.

(15) "Guidance and Discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(16) "Infant" means a child who is at least 6 weeks of age but is not yet walking alone.

(17) "Night Care" means care given to children who sleep at the home for all or part of the night.

(18) "Nonserious violation" means CCD has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-350-0010 (32). (19) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(20) "Operator" means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider.

(21) "Oregon Registry" means Pathways for Professional Recognition in Childhood Care and Education is a voluntary, statewide program to document and recognize the professional achievements of people who work in the childhood care and education profession.

(22) "Owner" means the person who holds the certified family child care business as property and has a major financial stake in the operation of the home.

(23) "Parent" means parent(s), custodian(s), or guardian(s) exercising physical care and legal custody of the child.

(24) "Potentially hazardous food" means any food or beverage containing milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice, beans or pasta, and all other previously cooked foods, including leftovers.

(25) "Preschool Age Child" means a child 36 months of age up to the summer vacation months prior to being eligible to be enrolled in the first grade in public school.

(26) "Program" means all activities and care provided for the children during their hours of attendance at the certified family child care home.

(27) "Provider" means the person in the certified family child care home who is responsible for the children in care, is the children's primary caregiver, and in whose name the certification is issued. In a certified family child care home, the provider is the operator.

(28) "Qualifying Teaching Experience" means 1,500 hours, gained in at least three-hour blocks, within a 36-month period, with a group of children in an on-going group setting. Such a setting includes a kindergarten, preschool, child care center, certified or registered family child care home, Head Start program, or equivalent. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(29) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(30) "School-Age Child" means a child eligible to be enrolled in the first grade or above in public school including the months of summer vacation prior to being eligible to be enrolled in the first grade, up to age 13.

(31) "Serious complaint" means a complaint filed against a certified child care home by a person who has alleged that:

- (a) Children are in imminent danger;
- (b) There are more children in care than allowed by certified capacity;
- (c) Corporal punishment is being used;
- (d) Children are not being supervised;
- (e) Multiple or serious fire, health or safety hazards are present in the home;
- (f) Extreme unsanitary conditions are present in the home; or
- (g) Adults are in the home who are not enrolled in the Central Background Registry.

(32) "Serious Violation" means CCD has made a valid finding when assessing a complaint that alleges:

- (a) Children are in imminent danger;
- (b) There are more children in care than allowed by law;
- (c) Corporal punishment is being used;
- (d) Children are not being supervised;
- (e) Multiple or serious fire, health or safety hazards are present in the home;
- (f) Extreme unsanitary conditions are present in the home; or
- (g) Adults are in the home who are not enrolled in the Child Care Division's Central Background Registry.

(33) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the certified family child care home in the temporary absence of the provider.

(34) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children, knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(35) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is at least 24 months of age but under 36 months of age.

(36) "Useable Exit" means an unobstructed door or window through which caregivers and children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0705; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 5-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 10-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2004, f. 7-30-04 cert. ef. 8-1-04; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

414-350-0020

Application for a Child Care Certificate

(1) No person, unless exempted by Oregon laws governing child care facilities, shall operate a certified family child care home without a valid certification issued by CCD.

(2) Application for certification shall be made on forms provided by CCD.

(3) A completed application is required:

- (a) For the initial certification;
- (b) For the annual renewal of certification; and
- (c) Whenever there is a change of provider or location.

(4) The applicant shall complete and submit an application to CCD at least:

(a) 45 days before the planned opening date of the certified family child care home; and

(b) For renewal of certification, 30 days prior to the expiration of the certificate.

(A) The expiration date of the current certification, the current certification, unless officially revoked, remains in force until CCD has acted on the application for renewal and has given notice of the action taken.

(B) If an application for renewal and payment of the required fee is not received by CCD at least 30 days prior to the expiration date of the current certification, the certification will expire as of the date stated on the certificate and child care must cease at the facility, unless the renewal is completed before the expiration date.

(C) An application for certification shall be accompanied by a non-refundable filing fee.

(D) For the initial application, a change of provider, the reopening of a facility after a lapse in certification, or a change of location, the fee is \$25 plus \$2 for each certified space (e.g., the fee for a certified family child care home certified to care for 12 children is \$24 + \$25 = \$49).

(E) For a renewal application, the fee is \$2 for each certified space.

(5) All civil penalties must be paid in full.

(6) An application for certification must be completed by the applicant and approved by CCD within 12 months of submission or the application will be denied. If an application is denied, an applicant will be required to submit a new application for certification.

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(7) The applicant shall submit with the initial application or when the home is being remodeled a drawing showing the dimensions of all rooms to be used (length and width), the planned use of each room, the location of required exits, the placement of the kitchen and bathrooms, and the location of plumbing fixtures.

(8) The applicant shall provide verification to CCD that the home meets all applicable building codes and zoning requirements that apply to certified family child care homes:

- (a) Before the initial certification is issued; and
- (b) Whenever the home is remodeled.

(9) The home shall be approved by an environmental health specialist registered under ORS Chapter 700 or an authorized representative of the Department of Human Services before a certification is issued by CCD.

(10) The home may be inspected by the local fire jurisdiction when local ordinances require a fire life safety survey as part of a business license or when CCD determines there is a need to do so.

(11) If the provider applies to care for more than 12 children, the provider must complete a fire life safety self evaluation. CCD staff and the provider will review the self evaluation. If fire safety concerns are identified, CCD staff may consult with the fire marshal and after consultation, may request that the fire marshal complete a fire life safety inspection.

(12) Upon receipt of a completed application, a representative of CCD shall evaluate the home and all aspects of the proposed operation to determine if certification requirements (OAR 414-350-0000 through 414-350-0405) are met.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.270, 657A.280 & 657A.310

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0710; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 8-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

414-350-0030

Issuance of a Child Care Certificate

(1) A certification shall be issued by CCD when it has been determined the home is in compliance with OAR 414-350-0000 through 414-350-0405. There are two types of certification. These are:

(a) A regular certification which, except as provided in OAR 414-350-0020(4)(b)(A), is valid for no more than one year; and

(b) A temporary certification. A certified family child care home may not operate under a temporary certification for more than 180 days in any 12-month period. A temporary certification is issued when:

(A) The home is in compliance with most requirements;

(B) There are no deficiencies identified by CCD that are hazardous to children; and

(C) The provider demonstrates an effort to be in full compliance.

(2) Certification is not transferable to any other location or to another organization or individual.

(3) A certification is granted in the name of the operator/provider. An operator/provider is limited to one certification at one address.

(4) An owner can have multiple sites under the following conditions:

(a) If the owner is the provider/operator in one of the homes, the owner can have two certified family child care homes; or

(b) If the owner does not directly care for any children, the owner can have more than two certified family child care homes.

(c) If the owner is the provider/operator in a home certified for more than 12 children, the owner may be the provider for only that certified family child care home. The provider may be the owner of other facilities. See OAR 414-350-0100 (5).

(5) Any changes in the conditions of certification shall be requested in writing to CCD and approved by CCD before the condition(s) of the current certification may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280, 657A.300 & 657A.310

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0715; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

414-350-0040

Exceptions to Rules

(1) CCD may grant an exception to an individual rule (OAR 414-350-0000 through 414-350-0405) for a specified period of time when:

(a) A requirement does not apply to the home; or

(b) The intent of the requirement can be met by a method not specified in the applicable rule.

(2) The provider shall request an exception to a rule on a form provided by CCD. The request shall include:

(a) A justification for the requested exception; and

(b) An explanation of how the provider plans to meet the intent of the rule.

(3) No exception to a rule shall be granted:

(a) If the requirement is established by statute;

(b) To any home safety requirement (OAR 414-350-0170);

(c) Unless the health, safety, and well-being of the children are ensured; or

(d) That would place the facility in violation of local zoning or state building codes.

(4) Exceptions may not be implemented until approval is received from CCD.

(5) The granting of an exception to a rule shall not set a precedent, and each request shall be considered on its own merits.

(6) CCD may withdraw approval of an exception at any time, if deemed necessary to ensure the health, safety and well-being of the children.

Stat.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.280

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0718; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

414-350-0050

General Requirements

(1) The following items shall be posted in the certified family child care home where they may be viewed by parents:

(a) The child care certification document;

(b) Notification of a communicable disease outbreak at the home;

(c) The evacuation plan; and

(d) A notice that the following items are available for parents to review:

(A) The guidance/discipline policy;

(B) The current week's menus, with substitutions recorded;

(C) The description of the general routine;

(D) Information on how to report a complaint to CCD regarding certification requirements; and

(E) The most recent CCD and sanitation inspection reports and, if applicable, fire life safety self evaluation (or fire marshal inspection report if completed).

(2) The provider shall ensure that a copy of these administrative rules is available in the certified family child care home to all parents and staff.

(3) Caregivers shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050) to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(4) The certified family child care home shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(5) Representatives of all agencies involved in certification shall have immediate access to all parts of the home whenever the provider is conducting the child care business:

(a) CCD staff shall have the right to enter and inspect the home, including access to all caregivers, records of children enrolled in the home, and all records and reports related to the child care operation regarding compliance with these rules; and

(b) Representatives of the Department of Human Services Child Welfare (DHS) and the State Fire Marshal have the right to enter and inspect the home when an inspection has been requested by CCD.

(6) Custodial parents of all children enrolled shall have access to the home during the hours their child(ren) are in care.

(7) The provider shall develop the following information in writing and shall make it available to CCD, to staff, and to parent(s) at the time of enrollment:

(a) Guidance and discipline policy;

(b) Information on transportation, when provided by the provider or other caregiver; and

(c) The plan for handling emergencies and/or evacuations, including, but not limited to, fire, acute illness of a child or staff, natural disasters,

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power outages, and situations which do not allow reentry to the home after evacuation.

(8) The provider shall comply with the Department of Human Services' administrative rules relating to:

(a) Immunization of children (OAR 333-019-0021 through 333-019-0090);

(b) Reporting communicable diseases (OAR 333-019-0215 through 333-019-0415); and

(c) Child care restrictable diseases (OAR 333-019-0010).

(9) The provider shall report to CCD:

(a) An accident at the home resulting in the death of a child, within 48 hours after the occurrence; and

(b) Injuries to a child at the certified family child care home which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence.

(10) Documentation of meals and snacks provided by the certified family child care home shall be made available to CCD upon request, if the home does not participate in the USDA Child and Adult Care Food Program. Documentation is limited to the three weeks prior to the request.

(11) The provider is responsible for compliance with these requirements (OAR 414-350-0000 through 414-350-0405).

(12) Parental request or permission to waive any of the rules for certified family child care homes does not give the provider permission to do so.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280, 657A.290, 657A.300, 657A.390 & 657A.400

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0720; CSD 9-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

414-350-0080

Records

(1) The provider shall keep the following records:

(a) Complete and current information on each child, as required in OAR 414-350-0060(3) and (4);

(b) Daily attendance record for each child, including dates each child attended and arrival and departure times each day;

(c) Daily attendance record for the provider and each caregiver, including dates worked and arrival and departure times each day;

(d) Medication administered, as specified in OAR 414-350-0180(8)(d);

(e) Emergency plan practice sessions and evacuations, as specified in OAR 414-350-0170(15);

(f) An injury to or death of a child, as specified in OAR 414-350-0180(7);

(g) Child abuse reports made to the Department of Human Services Child Welfare (DHS) or a law enforcement agency;

(h) The general routine, as specified in OAR 414-350-0220(2);

(i) Verification of the provider's and each caregiver's:

(A) Qualifications for the position, as specified in OAR 414-350-0100 and 414-350-0110;

(B) Current health-related training, such as CPR and First Aid, as specified in OAR 414-350-0100(3) and 0100(6);

(C) Training as required in OAR 414-350-0115;

(D) Current enrollment in the Central Background Registry;

(E) Current food handler's certification pursuant to ORS 624.570, when required; and

(F) Caregiver participation in an orientation to the provider's policies and practices and these administrative rules.

(2) A provider shall allow custodial parent(s), upon request, to review all records and reports, except for child abuse reports, maintained on their own children.

(3) Records shall be kept for at least two years, and caregivers' and children's records for two years after termination of employment or care. These records shall be available at all times to CCD.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0726; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

414-350-0090

General Requirements

(1) As required by Oregon civil rights law, ORS Chapter 659, the provider shall not discriminate in employment on the basis of race, color, gender, marital status, religion, national origin, age, or because of a mental or physical handicap unrelated to specific job performance.

(2) All caregivers, including the provider, shall:

(a) Have competence, sound judgment, and self-control in working with children;

(b) Be mentally, physically, and emotionally capable of performing assigned duties related to child care; and

(c) Have the required training and/or experience for the positions they hold, as specified in OAR 414-350-0100 and 0110.

(3) If there is evidence that casts doubt on the physical or mental competence of a person to care for children or have access to children, CCD may require that the provider provide CCD with an evaluation or other information, as specified by CCD.

(4) No one shall have access to child care children who has demonstrated behavior that may have a detrimental effect on a child. Residents of the home are considered to have access to the child care children even if they are not generally at home during hours of operation. This does not apply to parents of children in care when they drop off and pick up their children.

(a) The owner, the provider, all caregivers and other residents of the home 18 years of age or older must be enrolled in CCD's Central Background Registry prior to the issuance of an initial or renewal certification. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th birthday. Certification may be denied, suspended, or revoked if the provider or other resident of the home has been removed or suspended from the Central Background Registry.

(b) Prior to any new caregiver caring for children or prior to an individual residing in the home, visiting the home on a regular basis, or substituting for or assisting the provider, the caregiver/individual shall be enrolled in the Central Background Registry and the provider shall receive verification from CCD of the enrollment. This does not apply to parents of children in care unless they are residing in the home or assisting in the provision of child care.

(c) When a provider is notified by CCD that a caregiver or other individual has been removed from the Central Background Registry, the provider shall not permit the caregiver or other individual to be in the home during hours the child care business is conducted or to have access to child care children.

(d) If any person listed in section (4)(a) & (b) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which CCD has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification may be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in or reside in the home, or have access to children in the home.

(e) If a criminal record check shows that a warrant has been issued for any person checked, CCD will inform the originating law enforcement agency of the person's name, employment address and telephone number.

(f) Any visitor to the home or other adult who is not enrolled in the Central Background Registry shall not have unsupervised access to children.

(5) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Central Background Registry.

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Central Background Registry.

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the provider must have a written policy to this effect, the policy must be known to all caregivers and volunteers, and the volunteers do not have to be enrolled in the Central Background Registry.

(6) No person shall smoke or use smokeless tobacco in the certified family child care home during the hours the child care business is conducted. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.

(7) No one shall consume alcohol or use non-prescription controlled substances in the certified family child care home during the hours the child care business is conducted. No one under the influence of alcohol or non-prescription controlled substances shall be in the home during the hours the child care business is conducted.

Stat. Auth.: ORS 657A.260

ADMINISTRATIVE RULES

Stats. Implemented: ORS 657A.050, 657A.060 & 657A.290
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 10-1990, f. & cert. ef. 4-23-90; CSD 4-1991, f. & cert. ef. 3-7-91; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0730; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

414-350-0100 The Provider

- (1) The provider shall be:
 - (a) At least 18 years of age if the facility is certified for 12 children; or at least 21 years of age if the facility is certified for more than 12 children; and
 - (b) Responsible for the operation of the certified family child care home, including those duties ordinarily considered to be administrative. These include, but are not limited to, financial management, maintaining records, maintenance of the building and grounds, meal planning and preparation, compliance with certification requirements, communication with CCD, and correcting deficiencies.
- (2) The provider shall have:
 - (a) At least one year of qualifying teaching experience, as specified in OAR 414-350-0010(28), in the care of a group of children in an ongoing group setting such as a kindergarten, preschool, child care center, certified family child care home, registered family child care home, or Head Start program; or prior to applying to be certified for up to 16 children, completed one year of successful operation as a certified family child care facility for 12 children if the qualifying teaching experience is based on registered family child care; or
 - (b) Completion of 20 credits (semester system) or 30 credits (quarter system) of training in a college or university in early childhood education or child development; or
 - (c) Documentation of attaining at least step eight in the Oregon Registry.
- (3) The provider shall provide evidence of the following training prior to being certified:
 - (a) A current certification in infant and child first aid and cardiopulmonary resuscitation;
 - (b) A current food handler certification pursuant to ORS 624.570; and
 - (c) Completion of two hours of training on child abuse and neglect issues.
- (4) Prior to a facility providing care to more than two children under 24 months of age, the provider shall have at least 30 clock hours of training specific to infant and toddler care. The provider of facilities certified on October 15, 2002, who are providing care for more than two children under 24 months of age must have documentation of 30 hours of prior training in infant and toddler care or a plan, approved by CCD, that shows how the training will be attained.
- (5) The provider/operator shall be on-site at least half of the hours of operation that are reflected on the certification. If the facility is certified for more than 12 children, the provider shall be on site at least 2/3 of the hours of operation that are reflected on the certification. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences.
- (6) The provider shall have no other employment, either in or out of the home, during the hours the provider is directly caring for children.
- (7) The provider, or a substitute caregiver, shall be present during all the hours the certified family child care business is conducted.
- (8) A caregiver substituting for the provider shall:
 - (a) Be at least 18 years old;
 - (b) Have current certification in first aid and infant and child cardiopulmonary resuscitation (CPR);
 - (c) Have current food handler certification pursuant to ORS 624.570, if the substitute will be preparing or serving food;
 - (d) Be familiar with the provider's policies and procedures and with these requirements (OAR 414-350-0000 through 414-350-0405);
 - (e) Be authorized and able to correct a deficiency that might be an immediate threat to children; and
 - (f) Have on file documentation of an orientation and training in these administrative rules and the functions and duties of a provider;
 - (g) Meet the qualifications in (a)-(f), have completed child abuse and neglect training, and have worked in the facility at least 60 hours when substituting for the provider in a facility certified to care for more than 12 children.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0732; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-

414-350-0110 Assistants

- (1) Assistants may be included in the caregiver/child ratio calculation.
- (2) An Assistant I shall:
 - (a) Be at least 15 years of age;
 - (b) Work under the direct supervision, i.e., within sight and sound of the provider or substitute provider; and
 - (c) Have on file documentation of an orientation and be familiar with the provider's policies and procedures and these requirements (OAR 414-350-0000 through 414-350-0405).
- (3) An Assistant II shall:
 - (a) Be at least 18 years of age;
 - (b) Have on file documentation of an orientation and be familiar with the provider's policies and procedures and these requirements (OAR 414-350-0000 through 414-350-0405);
 - (c) Have worked at least 60 hours at the certified family child care home, in a minimum of 3-4 hour blocks of time;
 - (d) Have current certification in first aid and CPR; and
 - (e) With the approval of the provider, may be out of sight and sound of the provider with a group of children.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260 & 657A.290
Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0734; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

414-350-0400 Suspension of Certification

- (1) CCD may immediately, and without prior notice, suspend the child care certification when, in the opinion of CCD, such action is necessary to protect the children from physical or mental abuse or a substantial threat to health, safety or well-being. Such action may be taken before an investigation is completed.
 - (a) A provider whose certification has been suspended must immediately notify, verbally or in writing, all parents of the suspension.
 - (b) A provider whose certification has been suspended must post the suspension in the home where it can be viewed by parents and others.
- (2) The provider has the right to appeal any decision to suspend the certification, subject to the provisions of Chapter 183, Oregon Revised Statutes.
- (3) If the provider does not request a hearing and the conditions which resulted in suspension have not been corrected, the certification shall be revoked.

Stat. Auth.: ORS 657A.260
Stats. Implemented:
Hist.: CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

414-350-0405 Civil Penalty

- (1) A provider who violates these rules or the terms and conditions of certification under these rules may be subject to a civil penalty.
- (2) For a serious violation, as defined in OAR-414-350-0010 (32), a provider may be subject to a civil penalty of \$100 for the first violation after a written warning with time to correct is issued; and \$200 for each subsequent violation, not to exceed \$1,000 in a quarter for all rule violations.
- (3) For a non-serious violation, a provider may be subject to a civil penalty of \$50 for the first violation after a written warning with time to correct is issued; \$100 for a second violation, and \$200 for a third and subsequent violations, not to exceed \$1,000 in a quarter for all rule violations.
- (4) The provider has the right to appeal any decision to impose a civil penalty, subject to the provisions of Chapter 183, Oregon Revised Statutes.

Stat. Auth.: ORS 657A.260
Stats. Implemented:
Hist.: CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10

Rule Caption: Adds new rules for school age recorded programs.
Adm. Order No.: CCD 5-2010
Filed with Sec. of State: 6-30-2010
Certified to be Effective: 7-1-10
Notice Publication Date: 6-1-2010

ADMINISTRATIVE RULES

Rules Adopted: 414-425-0000, 414-425-0010, 414-425-0020, 414-425-0025, 414-425-0030, 414-425-0040

Subject: Adds new rules regarding requirements for recorded school age programs.

Rules Coordinator: Courtney Brooks—(503) 947-1724

414-425-0000

Purpose and Scope

(1) Oregon Administrative Rules (OAR) 414-425-0000 through 414-425-0040 are the Child Care Division's minimum requirements for school age recorded programs. The purpose of these rules is to collect and publish information on school age recorded programs and require criminal background checks on staff and volunteers having contact with children in these programs.

(2) Nothing in these rules is intended to create requirements applicable to a program that is:

(a) Required to be certified under ORS 657A.280 or registered under ORS 657A.330; or

(b) Operated by a school district as defined in ORS 332.002; or

(c) Operated by a political subdivision of this state; or

(d) Operated by a governmental agency.

(3) Nothing in these rules is intended to create requirements for programs that offer care that is a single enrichment activity for eight hours or less a week.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 5-2010, f. 6-30-10, cert. ef. 7-1-10

414-425-0010

Definitions

(1) "Child Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, during a part of the 24 hours of the day, with or without compensation.

(2) "CCD" means the Child Care Division of the Employment Department, or the Administrator or staff of the Division.

(3) "Program Record" means the document a school age recorded program is issued by the Child Care Division to operate a school age recorded program pursuant to ORS 657A.257 and OAR 414-425-0000 through 414-425-0030.

(4) "School Age Child" means a child eligible to be enrolled in the first grade or above in public school including the months of summer vacation prior to being eligible to be enrolled in the first grade or above in the next school year, up to age 13. For purposes of these rules, a child attending kindergarten may be considered a school age child.

(5) "School Age Recorded Program" means a program for school age children that does not take the place of a parent's care, in which youth development activities are provided to children during hours that school is not in session. For purposes of these rules it does not include programs that are operated by a school district as defined in ORS 332.002.

(6) "Staff" means any individual 18 years and older who works in, and has contact with children in the program

(7) "Youth development activities" means care, supervision or guidance that is intended for enrichment, including but not limited to teaching skills or proficiency in physical, social or educational activities such as tutoring, social activities, and recreational activities.

(8) "Volunteer" means any individual 18 years or older who intends to perform uncompensated duties for the program and who may have unsupervised contact with the children in the program or who is in the facility more than four hours per year and has contact with children in the program.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 5-2010, f. 6-30-10, cert. ef. 7-1-10

414-425-0020

Application for a Program Record

(1) No person or organization shall operate a school age recorded program without an active program record issued by the Child Care Division (CCD).

(2) Application for program record shall be made on forms provided by CCD. The original forms must be submitted to CCD for processing.

(3) A completed application is required:

(a) For a new program record

(b) For renewing a program record

(4) There is a nonrefundable processing fee of \$20 for each application.

(5) To determine if requirements are met, the applicant may be required to supply additional information or permit CCD to visit and assess the program.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 5-2010, f. 6-30-10, cert. ef. 7-1-10

414-425-0025

Issuance of a School Age Program Record

(1) CCD shall issue a program record to a person or organization operating a school age program if CCD determines that the applicant meets the requirements of ORS 657A.250 to 657A.450 and OAR 414-250-000 et. seq. and 414-300-0000 et. seq. and OAR 414-425-0000 through 414-425-0030.

(2) A record is valid for two years from date of issuance.

(3) A record authorizes operation of the school age recorded program only at the address described in the record and only by the person named in the record.

(4) CCD will create and maintain a database of school age recorded programs. The database will include:

(a) Name and address of the program;

(b) Name of contact person; and

(c) Program information such as capacity, school age range of children served and hours of operation.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 5-2010, f. 6-30-10, cert. ef. 7-1-10

414-425-0030

General Requirements

(1) The school age recorded program must assure that criminal background checks are done on all staff and volunteers prior to having contact with children in the program.

(2) The school age recorded program must post a notice where it is visible to parents that the program is recorded with CCD and is legally exempt from licensure.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 5-2010, f. 6-30-10, cert. ef. 7-1-10

414-425-0040

Denial of Application and Sanctions

(1) An initial application for a new program record or renewal application may be denied if the division finds that:

(a) The program or its operation does not comply with ORS 657A.250 to ORS 657A.450, with applicable rules or with any term or condition imposed under the record; or

(b) A visit, on-site investigation or inspection of a program or its records authorized by ORS 657A.390 has not been permitted.

(2) A person or organization that violates any provision of this section or any term or condition of a program record is subject to a civil penalty not to exceed \$100.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 5-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Adds new rules for preschool recorded programs.

Adm. Order No.: CCD 6-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Adopted: 414-450-0000, 414-450-0010, 414-450-0020, 414-450-0025, 414-450-0030, 414-450-0040

Subject: Adds new rules regarding requirements for preschool recorded programs.

Rules Coordinator: Courtney Brooks—(503) 947-1724

414-450-0000

Purpose and Scope

(1) Oregon Administrative Rules (OAR) 414-450-0000 through 414-450-0040 are the Child Care Division's minimum requirements for preschool recorded programs. The purpose of these rules is to collect and publish information on preschool recorded programs, and require criminal background checks on staff and volunteers having contact with children in these programs.

(2) Nothing in these rules is intended to create requirements applicable to a program that is:

ADMINISTRATIVE RULES

- (a) Required to be certified under ORS 657A.280 or registered under ORS 657A.330; or
- (b) Operated by a school district as defined in ORS 332.002; or
- (c) Operated by a political subdivision of this state; or
- (d) Operated by a governmental agency.
- Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 6-2010, f. 6-30-10, cert. ef. 7-1-10

414-450-0010

Definitions

- (1) "Child Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, during a part of the 24 hours of the day, with or without compensation.
- (2) "CCD" means the Child Care Division of the Employment Department, or the Administrator or staff of the Division.
- (3) "Preschool-Age Child" means a child who is 36 months of age up to the summer vacation months prior to being eligible to be enrolled in the first grade in public school.
- (4) "Preschool Recorded Program" means a facility providing care for preschool age children that is primarily educational for four hours or less per day and where no preschool child is present at the facility for more than four hours per day.
- (5) "Program Record" means the document a preschool recorded program is issued by the Child Care Division to operate a preschool recorded program pursuant to ORS 657A.257 and OAR 414-450-0000 through 414-450-0030.
- (6) "School-Age Child" means a child eligible to be enrolled in the first grade or above in public school including the months of summer vacation prior to being eligible to be enrolled in the first grade or above in the next school year, up to age 13. For purposes of these rules, a child attending kindergarten may be considered a school age child.
- (7) "Staff" means any individual 18 years and older who works in, and has contact with children in the program.
- (8) "Volunteer" means any individual 18 years or older who intends to perform uncompensated duties for the program and who may have unsupervised contact with the children in the program; or who is in the facility more than four hours per year and has contact with children in the program more than four hours per year and has contact with children in the program.
- Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 6-2010, f. 6-30-10, cert. ef. 7-1-10

414-450-0020

Application for a Program Record

- (1) No person or organization shall operate a preschool recorded program without an active program record issued by the Child Care Division (CCD).
- (2) Application for a program record shall be made on forms provided by CCD. The original forms must be submitted to CCD for processing.
- (3) A completed application is required:
- (a) For a new program record
- (b) For renewing a program record
- (4) There is a nonrefundable processing fee of \$20 for each application.
- (5) To determine if requirements are met, the applicant may be required to supply additional information or permit CCD to visit and assess the program.
- Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 6-2010, f. 6-30-10, cert. ef. 7-1-10

414-450-0025

Issuance of a Preschool Program Record

- (1) CCD shall issue a program record to a person or organization operating a preschool program if CCD determines that the applicant meets the requirements of ORS 657A.250 to 657A.450 and OAR 414-250-000 et. seq. and 414-300-0000 et. seq. and 414-450-0000 through 414-450-0030.
- (2) A program record is valid for two years from date of issuance.
- (3) A program record authorizes operation of the preschool recorded program only at the address described in the record and only by the person named in the record.
- (4) CCD will create and maintain a database of preschool recorded programs. The database will include:
- (a) Name and address of the program;
- (b) Name of contact person; and
- (c) Program information such as capacity, age range of children served and hours of operation.

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 6-2010, f. 6-30-10, cert. ef. 7-1-10

414-450-0030

General Requirements

- (1) The preschool recorded program must assure that criminal background checks are done on all staff and volunteers prior to having contact with children in the program.
- (2) The preschool recorded program must post a notice where it is visible to parents that the program is recorded with CCD and is legally exempt from licensure.
- Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 6-2010, f. 6-30-10, cert. ef. 7-1-10

414-450-0040

Denial of Application and Sanctions

- (1) An initial application for a new program record or renewal application may be denied if the division finds that:
- (a) The program or its operation does not comply with ORS 657A.250 to ORS 657A.450, with applicable rules or with any term or condition imposed under the record; or
- (b) A visit, on-site assessment or inspection of a program or its records authorized by ORS 657A.390 has not been permitted.
- (2) A person or organization that violates any provision of this section or any term or condition of a program record is subject to a civil penalty not to exceed \$100.
- Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 6-2010, f. 6-30-10, cert. ef. 7-1-10

Land Conservation and Development Department Chapter 660

Rule Caption: Amending department rules to comply with Religious Land Use and Institutionalized Persons Act (RLUIPA) requirements.

Adm. Order No.: LCDD 6-2010

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Rules Amended: 660-033-0120, 660-033-0130

Subject: OAR-660-033-0130 describes the standards applicable to permitted and conditional non-farm uses on agricultural lands. Subsection 2 prohibits certain new uses within three miles of an urban growth boundary (UGB), unless an exception is taken to Statewide Planning Goal 3 (Agricultural Lands). OAR 660-033-0120 (Uses Authorized on Agricultural Lands) describes, in a table format, which uses are allowed (with or without conditions, additional restrictions or exceptions) or disallowed altogether on agricultural lands. Churches and certain other uses in the Parks/Public/Quasi-public category (including schools) are the sole uses subject to the 3-mile limitation as described above. The reason for this limitation was to protect the integrity of UGBs. *Young v. Jackson County*, 58 Or LUBA 64 (2008) (affirmed without opinion by the Oregon Court of Appeals, *Young v. Jackson County*, 227 Or App 290, 205 P3d 890 (2009)) requires that LCDC revisit its division 33 rules. The LUBA opinion concluded that the application of the 3-mile rule with regard to the proposed church violates the "equal terms" provision of RLUIPA. The "equal terms" provision prohibits government from implementing a land-use regulation in a manner that treats religious assemblies and institutions less favorably than secular assemblies and institutions.

The amended rules limit the permitted design capacity for enclosed structures on EFU-zoned property within three miles (outside) of a UGB, with regard to identified uses in the Parks/Public/Quasi-Public category of OAR 660, division 033-0120, Table 1.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-033-0120

Uses Authorized on Agricultural Lands

The specific development and uses listed in the following table are permitted in the areas that qualify for the designation pursuant to this divi-

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sion. All uses are subject to the general provisions, special conditions, additional restrictions and exceptions set forth in this division. The abbreviations used within the schedule shall have the following meanings:

(1) A — Use may be allowed. Authorization of some uses may require notice and the opportunity for a hearing because the authorization qualifies as a land use decision pursuant to ORS chapter 197. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(2) R — Use may be approved, after required review. The use requires notice and the opportunity for a hearing. Minimum standards for uses in the table that include a numerical reference are specified in OAR 660-033-0130. Counties may prescribe additional limitations and requirements to meet local concerns as authorized by law.

(3) * — Use not permitted.

(4) # — Numerical references for specific uses shown on the chart refer to the corresponding section of OAR 660-033-0130. Where no numerical reference is noted for a use on the chart, this rule does not establish criteria for the use.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 197.040 & 197.245

Stats. Implemented: ORS 197.015, 197.040, 197.230, 197.245, 215.203, 215.243, 215.283, 215.700 - 215.710 & 215.780

Hist.: LCDC 6-1992, f. & cert. ef. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 2-1995(Temp), f. & cert. ef. 3-14-95; LCDC 7-1995, f. & cert. ef. 6-16-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. & cert. ef. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10

660-033-0130

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.

(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, "tract" means a tract as defined by ORS 215.010(2) that is in existence as of the effective date of this section.

(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.

(3)(a) A dwelling may be approved if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule;

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habi-

tat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a); and

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel's limited economic potential demonstrate that a lot or parcel cannot be practicably managed for farm use. Examples of "extraordinary circumstances inherent in the land or its physical setting" include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.

(ii) The dwelling will comply with the provisions of ORS 215.296(1);

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule.

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the State Department of Agriculture. Notice shall be provided in accordance with the governing body's land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

(i) Identified in OAR 660-033-0020(8)(c) or (d); and

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size; and

(C)(i) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(ii) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(D) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

(i) "flaglot" means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) "Geographic center of the flaglot" means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(e) If land is in a zone that allows both farm and forest uses is acknowledged to be in compliance with both Goals 3 and 4 and may qual-

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ify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

(A) Exceed the facilities and service capabilities of the area;

(B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, "owner" includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent or grandchild of the owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.

(4) Requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

(a) In the Willamette Valley, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11) of this rule, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) -- (8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.

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(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

(6) Such facility shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period which is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) A personal use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(8)(a) A lawfully established dwelling is a single family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be:

(i) Removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9)(a) To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the

dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p). Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division.

(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.

(13) Such uses may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

(14) Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

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(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(17) A power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR chapter 660, division 4.

(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213 (1)(a) or 215.283 (1)(a), as in effect before the effective date of 2009 Or Laws Chapter 850, section 14, may be expanded subject to:

(A) The requirements of subsection (c) of this section; and

(B) Conditional approval of the county in the manner provided in ORS 215.296.

(c) A nonconforming use described in subsection (b) of this section may be expanded under this section if:

(A) The use was established on or before January 1, 2009; and

(B) The expansion occurs on:

(i) The tax lot on which the use was established on or before January 1, 2009; or

(ii) A tax lot that is contiguous to the tax lot described in subparagraph

(i) of this paragraph and that was owned by the applicant on January 1, 2009.

(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As

used in section (19) of this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing.

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

(22) A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

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(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

(24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator; and

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling; or

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reappraised under these rules; or

(iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a non-residential use when farm worker housing is no longer required; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5) or (7), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

(i) At least \$40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of pur-

chased livestock shall be deducted from the total gross income attributed to the tract; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or 660-033-0130(24)(b)(A); or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-033-0100;

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code."

(25) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.

(26) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(28) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. A county shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are exempt from a permit from the Department of Environmental Quality (DEQ) under OAR 340-093-0050, only require approval of an Agricultural Compost Management Plan by the Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050 where the compost is applied primarily on the subject farm or used to manage and dispose of by-products generated on the subject farm. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

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(b) Composting operations and facilities allowed on land not defined as high-value farmland shall be limited to the composting operations and facilities allowed by subsection (29)(a) of this rule or that require a permit from the Department of Environmental Quality under OAR 340-093-0050. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(a) A public right of way;

(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(c) The property to be served by the utility.

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this Division.

(34) Any gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings and any part of which is held in open spaces are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three-month period.

(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and

(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).

(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:

(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils.

(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

(D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices; and

(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval; and

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040 & 215.213

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LDCD 5-1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD 5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10

Rule Caption: Allow private campgrounds to offer extended stays to construction workers. Create opportunity for temporary campgrounds.

Adm. Order No.: LCDD 7-2010(Temp)

Filed with Sec. of State: 6-17-2010

Certified to be Effective: 6-17-10 thru 11-30-10

Notice Publication Date:

Rules Amended: 660-033-0130

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Subject: The temporary rule supplements existing provisions for private campgrounds on lands designated for exclusive farm use. Existing private campground provisions contemplate recreational users and limit campground stays to a total of 30-days during any consecutive 180-day period. The temporary rule is intended to support large scale construction projects by allowing extended stays in existing and new private campgrounds and providing for the establishment of temporary camping facilities under certain circumstances.

Rules Coordinator: Casaria Tuttle—(503) 373-0050, ext. 322

660-033-0130

Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

The following standards apply to uses listed in OAR 660-033-0120 where the corresponding section number is shown on the chart for a specific use under consideration. Where no numerical reference is indicated on the chart, this division does not specify any minimum review or approval criteria. Counties may include procedures and conditions in addition to those listed in the chart as authorized by law:

(1) A dwelling on farmland may be considered customarily provided in conjunction with farm use if it meets the requirements of OAR 660-033-0135.

(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

(b) Any enclosed structures or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. For purposes of this section, “tract” means a tract as defined by ORS 215.010(2) that is in existence as of the effective date of this section.

(c) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law, but enclosed existing structures within a farm use zone within three miles of an urban growth boundary may not be expanded beyond the requirements of this rule.

(3)(a) A dwelling may be approved if:

(A) The lot or parcel on which the dwelling will be sited was lawfully created and was acquired and owned continuously by the present owner as defined in subsection (3)(g) of this rule:

(i) Since prior to January 1, 1985; or

(ii) By devise or by intestate succession from a person who acquired and had owned continuously the lot or parcel since prior to January 1, 1985.

(B) The tract on which the dwelling will be sited does not include a dwelling;

(C) The lot or parcel on which the dwelling will be sited was part of a tract on November 4, 1993, no dwelling exists on another lot or parcel that was part of that tract;

(D) The proposed dwelling is not prohibited by, and will comply with, the requirements of the acknowledged comprehensive plan and land use regulations and other provisions of law;

(E) The lot or parcel on which the dwelling will be sited is not high-value farmland except as provided in subsections (3)(c) and (d) of this rule;

(F) When the lot or parcel on which the dwelling will be sited lies within an area designated in an acknowledged comprehensive plan as habitat of big game, the siting of the dwelling is consistent with the limitations on density upon which the acknowledged comprehensive plan and land use regulations intended to protect the habitat are based.

(b) When the lot or parcel on which the dwelling will be sited is part of a tract, the remaining portions of the tract are consolidated into a single lot or parcel when the dwelling is allowed;

(c) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The lot or parcel is protected as high-value farmland as defined in OAR 660-033-0020(8)(a); and

(C) A hearings officer of a county determines that:

(i) The lot or parcel cannot practicably be managed for farm use, by itself or in conjunction with other land, due to extraordinary circumstances inherent in the land or its physical setting that do not apply generally to other land in the vicinity. For the purposes of this section, this criterion asks whether the subject lot or parcel can be physically put to farm use without

undue hardship or difficulty because of extraordinary circumstances inherent in the land or its physical setting. Neither size alone nor a parcel’s limited economic potential demonstrate that a lot or parcel cannot be practicably managed for farm use. Examples of “extraordinary circumstances inherent in the land or its physical setting” include very steep slopes, deep ravines, rivers, streams, roads, railroad or utility lines or other similar natural or physical barriers that by themselves or in combination separate the subject lot or parcel from adjacent agricultural land and prevent it from being practicably managed for farm use by itself or together with adjacent or nearby farms. A lot or parcel that has been put to farm use despite the proximity of a natural barrier or since the placement of a physical barrier shall be presumed manageable for farm use.

(ii) The dwelling will comply with the provisions of ORS 215.296(1);

(iii) The dwelling will not materially alter the stability of the overall land use pattern in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule.

(D) A local government shall provide notice of all applications for dwellings allowed under subsection (3)(c) of this rule to the State Department of Agriculture. Notice shall be provided in accordance with the governing body’s land use regulations but shall be mailed at least 20 calendar days prior to the public hearing before the hearings officer under paragraph (3)(c)(C) of this rule.

(d) Notwithstanding the requirements of paragraph (3)(a)(E) of this rule, a single-family dwelling may be sited on high-value farmland if:

(A) It meets the other requirements of subsections (3)(a) and (b) of this rule;

(B) The tract on which the dwelling will be sited is:

(i) Identified in OAR 660-033-0020(8)(c) or (d); and

(ii) Not high-value farmland defined in OAR 660-033-0020(8)(a); and

(iii) Twenty-one acres or less in size; and

(C)(i) The tract is bordered on at least 67 percent of its perimeter by tracts that are smaller than 21 acres, and at least two such tracts had dwellings on January 1, 1993; or

(ii) The tract is not a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary; or

(D) The tract is a flaglot and is bordered on at least 25 percent of its perimeter by tracts that are smaller than 21 acres, and at least four dwellings existed on January 1, 1993, within 1/4 mile of the center of the subject tract and on the same side of the public road that provides access to the subject tract. The governing body of a county must interpret the center of the subject tract as the geographic center of the flaglot if the applicant makes a written request for that interpretation and that interpretation does not cause the center to be located outside the flaglot. Up to two of the four dwellings may lie within an urban growth boundary, but only if the subject tract abuts an urban growth boundary:

(i) “flaglot” means a tract containing a narrow strip or panhandle of land providing access from the public road to the rest of the tract.

(ii) “Geographic center of the flaglot” means the point of intersection of two perpendicular lines of which the first line crosses the midpoint of the longest side of a flaglot, at a 90-degree angle to the side, and the second line crosses the midpoint of the longest adjacent side of the flaglot.

(e) If land is in a zone that allows both farm and forest uses is acknowledged to be in compliance with both Goals 3 and 4 and may qualify as an exclusive farm use zone under ORS chapter 215, a county may apply the standards for siting a dwelling under either section (3) of this rule or OAR 660-006-0027, as appropriate for the predominant use of the tract on January 1, 1993;

(f) A county may, by application of criteria adopted by ordinance, deny approval of a dwelling allowed under section (3) of this rule in any area where the county determines that approval of the dwelling would:

(A) Exceed the facilities and service capabilities of the area;

(B) Materially alter the stability of the overall land use pattern of the area; or

(C) Create conditions or circumstances that the county determines would be contrary to the purposes or intent of its acknowledged comprehensive plan or land use regulations.

(g) For purposes of subsection (3)(a) of this rule, “owner” includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, stepparent, stepchild, grandparent or grandchild of the

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owner or a business entity owned by any one or a combination of these family members;

(h) The county assessor shall be notified that the governing body intends to allow the dwelling.

(i) When a local government approves an application for a single-family dwelling under section (3) of this rule, the application may be transferred by a person who has qualified under section (3) of this rule to any other person after the effective date of the land use decision.

(4) Requires approval of the governing body or its designate in any farmland area zoned for exclusive farm use:

(a) In the Willamette Valley, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils;

(C) The dwelling will be sited on a lot or parcel created before January 1, 1993;

(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:

(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;

(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsections (3)(a), (3)(d) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area;

(E) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(b) In the Willamette Valley, on a lot or parcel allowed under OAR 660-033-0100(11) of this rule, the use may be approved if:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated and whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(C) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(c) In counties located outside the Willamette Valley require findings that:

(A) The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use;

(B)(i) The dwelling is situated upon a lot or parcel, or a portion of a lot or parcel, that is generally unsuitable land for the production of farm crops and livestock or merchantable tree species, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the tract. A lot or parcel or portion of a lot or parcel shall not be considered unsuitable solely because of size or location if it can reasonably be put to farm or forest use in conjunction with other land; and

(ii) A lot or parcel or portion of a lot or parcel is not "generally unsuitable" simply because it is too small to be farmed profitably by itself. If a lot or parcel or portion of a lot or parcel can be sold, leased, rented or otherwise managed as a part of a commercial farm or ranch, then the lot or parcel or portion of the lot or parcel is not "generally unsuitable". A lot or parcel or portion of a lot or parcel is presumed to be suitable if, in Western Oregon it is composed predominantly of Class I-IV soils or, in Eastern Oregon, it is composed predominantly of Class I-VI soils. Just because a lot or parcel or portion of a lot or parcel is unsuitable for one farm use does not mean it is not suitable for another farm use; or

(iii) If the parcel is under forest assessment, the dwelling shall be situated upon generally unsuitable land for the production of merchantable tree species recognized by the Forest Practices Rules, considering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and size of the parcel. If a lot or parcel is under forest assessment, the area is not "generally unsuitable" simply because it is too small to be managed for forest production profitably by itself. If a lot or parcel under forest assessment can be sold, leased, rented or otherwise managed as a part of a forestry operation, it is not "generally unsuitable". If a lot or parcel is under forest assessment, it is presumed suitable if, in Western Oregon, it is composed predominantly of soils capable of producing 50 cubic feet of wood fiber per acre per year, or in Eastern Oregon it is composed predominantly of soils capable of producing 20 cubic feet of wood fiber per acre per year. If a lot or parcel is under forest assessment, to be found compatible and not seriously interfere with forest uses on surrounding land it must not force a significant change in forest practices or significantly increase the cost of those practices on the surrounding land;

(C) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of nonfarm dwellings on other lots or parcels in the area similarly situated by applying the standards set forth in paragraph (4)(a)(D) of this rule. If the application involves the creation of a new parcel for the nonfarm dwelling, a county shall consider whether creation of the parcel will lead to creation of other nonfarm parcels, to the detriment of agriculture in the area by applying the standards set forth in paragraph (4)(a)(D) of this rule; and

(D) The dwelling complies with such other conditions as the governing body or its designate considers necessary.

(d) If a single-family dwelling is established on a lot or parcel as set forth in section (3) of this rule or OAR 660-006-0027, no additional dwelling may later be sited under the provisions of section (4) of this rule;

(e) Counties that have adopted marginal lands provisions before January 1, 1993, shall apply the standards in ORS 215.213(3) -- (8) for nonfarm dwellings on lands zoned exclusive farm use that are not designated marginal or high-value farmland.

(5) Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and

(b) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

(6) Such facility shall not seriously interfere with accepted farming practices and shall be compatible with farm uses described in ORS 215.203(2). Such facility may be approved for a one-year period which is renewable and is intended to be only portable or temporary in nature. The primary processing of a forest product, as used in this section, means the use of a portable chipper or stud mill or other similar methods of initial treatment of a forest product in order to enable its shipment to market. Forest products as used in this section means timber grown upon a tract where the primary processing facility is located.

(7) A personal use airport as used in this section means an airstrip restricted, except for aircraft emergencies, to use by the owner, and on an

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infrequent and occasional basis, by invited guests, and by commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal use airport other than those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted under this definition may be granted through waiver action by the Oregon Department of Aviation in specific instances. A personal use airport lawfully existing as of September 13, 1975, shall continue to be permitted subject to any applicable rules of the Oregon Department of Aviation.

(8)(a) A lawfully established dwelling is a single family dwelling which:

(A) Has intact exterior walls and roof structure;

(B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(C) Has interior wiring for interior lights; and

(D) Has a heating system.

(b) In the case of replacement, the dwelling to be replaced shall be:

(i) Removed, demolished, or converted to an allowable use within three months of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of the same lot or parcel. A dwelling established under this section shall comply with all applicable siting standards. However, the standards shall not be applied in a manner that prohibits the siting of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the deed records for the county where the property is located a deed restriction prohibiting the siting of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless a statement of release is placed in the deed records for the county. The release shall be signed by the county or its designee and state that the provisions of this section regarding replacement dwellings have changed to allow the siting of another dwelling. The county planning director or the director's designee shall maintain a record of the lots and parcels that do not qualify for the siting of a new dwelling under the provisions of this section, including a copy of the deed restrictions and release statements filed under this section; and

(ii) For which the applicant has requested a deferred replacement permit, is removed or demolished within three months after the deferred replacement permit is issued. A deferred replacement permit allows construction of the replacement dwelling at any time. If, however, the established dwelling is not removed or demolished within three months after the deferred replacement permit is issued, the permit becomes void. The replacement dwelling must comply with applicable building codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to siting at the time of construction. A deferred replacement permit may not be transferred, by sale or otherwise, except by the applicant to the spouse or a child of the applicant.

(c) An accessory farm dwelling authorized pursuant to OAR 660-033-0130(24)(a)(B)(iii), may only be replaced by a manufactured dwelling.

(9)(a) To qualify, a dwelling shall be occupied by persons whose assistance in the management and farm use of the existing commercial farming operation is required by the farm operator. The farm operator shall continue to play the predominant role in the management and farm use of the farm. A farm operator is a person who operates a farm, doing the work and making the day-to-day decisions about such things as planting, harvesting, feeding and marketing.

(b) Notwithstanding ORS 92.010 to 92.190 or the minimum lot or parcel requirements under ORS 215.780, if the owner of a dwelling described in OAR 660-033-0130(9) obtains construction financing or other financing secured by the dwelling and the secured party forecloses on the dwelling, the secured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure shall operate as a partition of the homesite to create a new parcel. Prior conditions of approval for the subject land and dwelling remain in effect.

(c) For the purpose of OAR 660-033-0130(9)(b), "foreclosure" means only those foreclosures that are exempt from partition under ORS 92.010(7)(a).

(10) A manufactured dwelling, or recreational vehicle, or the temporary residential use of an existing building allowed under this provision is a temporary use for the term of the hardship suffered by the existing resident or relative as defined in ORS chapter 215. The manufactured dwelling shall use the same subsurface sewage disposal system used by the existing dwelling, if that disposal system is adequate to accommodate the additional dwelling. If the manufactured home will use a public sanitary sewer system, such condition will not be required. Governing bodies shall review the permit authorizing such manufactured homes every two years. Within three months of the end of the hardship, the manufactured dwelling or recre-

ational vehicle shall be removed or demolished or, in the case of an existing building, the building shall be removed, demolished or returned to an allowed nonresidential use. A temporary residence approved under this section is not eligible for replacement under ORS 215.213(1)(q) or 215.283(1)(p). Oregon Department of Environmental Quality review and removal requirements also apply. As used in this section "hardship" means a medical hardship or hardship for the care of an aged or infirm person or persons.

(11) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with rules adopted under ORS 468B.095, and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural process or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zones under this division.

(12) In order to meet the requirements specified in the statute, a historic dwelling shall be listed on the National Register of Historic Places.

(13) Such uses may be established, subject to the adoption of the governing body or its designate of an exception to Goal 3, Agricultural Lands, and to any other applicable goal with which the facility or improvement does not comply. In addition, transportation uses and improvements may be authorized under conditions and standards as set forth in OAR 660-012-0035 and 660-012-0065.

(14) Home occupations and the parking of vehicles may be authorized. Home occupations shall be operated substantially in the dwelling or other buildings normally associated with uses permitted in the zone in which the property is located. A home occupation shall be operated by a resident or employee of a resident of the property on which the business is located, and shall employ on the site no more than five full-time or part-time persons.

(15) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.

(16)(a) A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

(A) Technical and engineering feasibility;

(B) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;

(C) Lack of available urban and nonresource lands;

(D) Availability of existing rights of way;

(E) Public health and safety; and

(F) Other requirements of state and federal agencies.

(b) Costs associated with any of the factors listed in subsection (16)(a) of this rule may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar.

(c) The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(d) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands.

(e) In addition to the provisions of subsections 16(a) to (d) of this rule, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.

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(f) The provisions of subsections 16(a) to (d) of this rule do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

(17) A power generation facility shall not preclude more than 12 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to OAR chapter 660, division 4.

(18)(a) Existing facilities wholly within a farm use zone may be maintained, enhanced or expanded on the same tract, subject to other requirements of law. An existing golf course may be expanded consistent with the requirements of sections (5) and (20) of this rule, but shall not be expanded to contain more than 36 total holes.

(b) In addition to and not in lieu of the authority in ORS 215.130 to continue, alter, restore or replace a use that has been disallowed by the enactment or amendment of a zoning ordinance or regulation, a use formerly allowed pursuant to ORS 215.213 (1)(a) or 215.283 (1)(a), as in effect before the effective date of 2009 Or Laws Chapter 850, section 14, may be expanded subject to:

(A) The requirements of subsection (c) of this section; and

(B) Conditional approval of the county in the manner provided in ORS 215.296.

(c) A nonconforming use described in subsection (b) of this section may be expanded under this section if:

(A) The use was established on or before January 1, 2009; and

(B) The expansion occurs on:

(i) The tax lot on which the use was established on or before January 1, 2009; or

(ii) A tax lot that is contiguous to the tax lot described in subparagraph (i) of this paragraph and that was owned by the applicant on January 1, 2009.

(19)(a) Except on a lot or parcel contiguous to a lake or reservoir, private campgrounds shall not be allowed within three miles of an urban growth boundary unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4. A campground is an area devoted to overnight temporary use for vacation, recreational or emergency purposes, but not for residential purposes and is established on a site or is contiguous to lands with a park or other outdoor natural amenity that is accessible for recreational use by the occupants of the campground. A campground shall be designed and integrated into the rural agricultural and forest environment in a manner that protects the natural amenities of the site and provides buffers of existing native trees and vegetation or other natural features between campsites. Campgrounds authorized by this rule shall not include intensively developed recreational uses such as swimming pools, tennis courts, retail stores or gas stations. Overnight temporary use in the same campground by a camper or camper's vehicle shall not exceed a total of 30 days during any consecutive 6 month period.

(b) Campsites may be occupied by a tent, travel trailer, yurt or recreational vehicle. Separate sewer, water or electric service hook-ups shall not be provided to individual camp sites except that electrical service may be provided to yurts allowed for by subsection (19)(c) of this rule.

(c) Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the Commission determines that the increase will comply with the standards described in ORS 215.296(1). As used in section (19) of this rule, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hook-up or internal cooking appliance.

(d) Notwithstanding the relevant provisions of paragraphs (a), (b) or (c) above, a county may authorize new temporary campgrounds and camper stays exceeding a total of 30 days in a consecutive six month period in an existing private campground to provide temporary workforce housing opportunities for a large-scale construction project that has received all necessary land use approvals. As used in this rule a "large-scale construction project" means commercial utility facilities for the purpose of generating power for public use by sale, including wind power generation facilities, and transmission facilities including natural gas pipelines and electrical transmission lines and towers. In addition:

(A) A new temporary campground authorized under this paragraph only may include minimal physical structures for shelter and restroom facilities, the minimum amount of on-site water, wastewater and power services necessary to accommodate the use, and up to 16 campsites. All

structures and facilities in a new temporary campground must be temporary in nature.

(B) A new temporary campground must either be retired and removed, or converted to an allowed use upon completion of construction of the large-scale construction project. In addition, the authorization for extended stays in an existing private campground under this paragraph terminates upon completion of construction of the large-scale construction project.

(C) A new temporary campground of four or fewer temporary campsites does not require land use approval and may be considered an allowed temporary use subject to local siting standards so long as no permanent facilities are established, the camping activity is located within 100 yards of existing residential or agricultural structures located on the same property and the camping activity ceases when the large scale construction project has been completed.

(20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f) and this division means a 9 or 18 hole regulation golf course or a combination 9 and 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole golf course is generally characterized by a site of about 120 to 150 acres of land, has a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes;

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par 3 golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing.

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

(21) "Living History Museum" means a facility designed to depict and interpret everyday life and culture of some specific historic period using authentic buildings, tools, equipment and people to simulate past activities and events. As used in this rule, a living history museum shall be related to resource based activities and shall be owned and operated by a governmental agency or a local historical society. A living history museum may include limited commercial activities and facilities that are directly related to the use and enjoyment of the museum and located within authentic buildings of the depicted historic period or the museum administration building, if areas other than an exclusive farm use zone cannot accommodate the museum and related activities or if the museum administration buildings and parking lot are located within one quarter mile of an urban growth boundary. "Local historical society" means the local historical society, recognized as such by the county governing body and organized under ORS chapter 65.

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(22) A power generation facility shall not preclude more than 20 acres from use as a commercial agricultural enterprise unless an exception is taken pursuant to ORS 197.732 and OAR chapter 660, division 4.

(23) A farm stand may be approved if:

(a) The structures are designed and used for sale of farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand, if the annual sales of the incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(b) The farm stand does not include structures designed for occupancy as a residence or for activities other than the sale of farm crops and livestock and does not include structures for banquets, public gatherings or public entertainment.

(c) As used in this section, "farm crops or livestock" includes both fresh and processed farm crops and livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area. As used in this subsection, "processed crops and livestock" includes jams, syrups, apple cider, animal products and other similar farm crops and livestock that have been processed and converted into another product but not prepared food items.

(d) As used in this section, "local agricultural area" includes Oregon or an adjacent county in Washington, Idaho, Nevada or California that borders the Oregon county in which the farm stand is located.

(24) Accessory farm dwellings as defined by subsection (24)(e) of this section may be considered customarily provided in conjunction with farm use if:

(a) Each accessory farm dwelling meets all the following requirements:

(A) The accessory farm dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land and whose seasonal or year-round assistance in the management of the farm use, such as planting, harvesting, marketing or caring for livestock, is or will be required by the farm operator; and

(B) The accessory farm dwelling will be located:

(i) On the same lot or parcel as the primary farm dwelling; or

(ii) On the same tract as the primary farm dwelling when the lot or parcel on which the accessory farm dwelling will be sited is consolidated into a single parcel with all other contiguous lots and parcels in the tract; or

(iii) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only a manufactured dwelling with a deed restriction. The deed restriction shall be filed with the county clerk and require the manufactured dwelling to be removed when the lot or parcel is conveyed to another party. The manufactured dwelling may remain if it is reapproved under these rules; or

(iv) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is limited to only attached multi-unit residential structures allowed by the applicable state building code or similar types of farm labor housing as existing farm labor housing on the farm or ranch operation registered with the Department of Consumer and Business Services, Oregon Occupational Safety and Health Division under ORS 658.750. A county shall require all accessory farm dwellings approved under this subparagraph to be removed, demolished or converted to a non-residential use when farm worker housing is no longer required; or

(v) On a lot or parcel on which the primary farm dwelling is not located, when the accessory farm dwelling is located on a lot or parcel at least the size of the applicable minimum lot size under ORS 215.780 and the lot or parcel complies with the gross farm income requirements in OAR 660-033-0135(5) or (7), whichever is applicable; and

(C) There is no other dwelling on the lands designated for exclusive farm use owned by the farm operator that is vacant or currently occupied by persons not working on the subject farm or ranch and that could reasonably be used as an accessory farm dwelling.

(b) In addition to the requirements in subsection (a) of this section, the primary farm dwelling to which the proposed dwelling would be accessory, meets one of the following:

(A) On land not identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced in the last two years or three of the last five years the lower of the following:

(i) At least \$40,000 in gross annual income from the sale of farm products. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract.

(ii) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with the gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(B) On land identified as high-value farmland, the primary farm dwelling is located on a farm or ranch operation that is currently employed for farm use, as defined in ORS 215.203, and produced at least \$80,000 in gross annual income from the sale of farm products in the last two years or three of the last five years. In determining the gross income, the cost of purchased livestock shall be deducted from the total gross income attributed to the tract; or

(C) On land not identified as high-value farmland in counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, the primary farm dwelling is located on a farm or ranch operation that meets the standards and requirements of ORS 215.213(2)(a) or (b) or OAR 660-033-0130(24)(b)(A); or

(D) It is located on a commercial dairy farm as defined by OAR 660-033-0135(11); and

(i) The building permits, if required, have been issued and construction has begun or been completed for the buildings and animal waste facilities required for a commercial dairy farm; and

(ii) The Oregon Department of Agriculture has approved a permit for a "confined animal feeding operation" under ORS 468B.050 and 468B.200 to 468B.230; and

(iii) A Producer License for the sale of dairy products under ORS 621.072.

(c) The governing body of a county shall not approve any proposed division of a lot or parcel for an accessory farm dwelling approved pursuant to this section. If it is determined that an accessory farm dwelling satisfies the requirements of OAR 660-033-0135, a parcel may be created consistent with the minimum parcel size requirements in OAR 660-033-0100;

(d) An accessory farm dwelling approved pursuant to this section cannot later be used to satisfy the requirements for a dwelling not provided in conjunction with farm use pursuant to section (4) of this rule.

(e) For the purposes of OAR 660-033-0130(24), "accessory farm dwelling" includes all types of residential structures allowed by the applicable state building code."

(25) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition) before January 1, 1993, an armed forces reserve center, if the center is within one-half mile of a community college. An "armed forces reserve center" includes an armory or National Guard support facility.

(26) Buildings and facilities shall not be more than 500 square feet in floor area or placed on a permanent foundation unless the building or facility preexisted the use approved under this section. The site shall not include an aggregate surface or hard surface area unless the surface preexisted the use approved under this section. An owner of property used for the purpose authorized in this paragraph may charge a person operating the use on the property rent for the property. An operator may charge users of the property a fee that does not exceed the operator's cost to maintain the property, buildings and facilities. As used in this section, "model aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is used or intended to be used for flight and controlled by radio, lines or design by a person on the ground.

(27) Insect species shall not include any species under quarantine by the State Department of Agriculture or the United States Department of Agriculture. The county shall provide notice of all applications under this section to the State Department of Agriculture. Notice shall be provided in accordance with the county's land use regulations but shall be mailed at least 20 calendar days prior to any administrative decision or initial public hearing on the application.

(28) The farm on which the processing facility is located must provide at least one-quarter of the farm crops processed at the facility. The building established for the processing facility shall not exceed 10,000 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm use or devote more than 10,000 square feet to the processing activities within another building supporting farm use. A processing facility shall comply with all applicable siting standards but the standards shall not be applied in a manner that prohibits the siting of the processing facility. A county shall not approve any division of a lot or parcel that separates a processing facility from the farm operation on which it is located.

(29)(a) Composting operations and facilities allowed on high-value farmland are limited to those that are exempt from a permit from the

ADMINISTRATIVE RULES

Department of Environmental Quality (DEQ) under OAR 340-093-0050, only require approval of an Agricultural Compost Management Plan by the Oregon Department of Agriculture, or require a permit from the DEQ under OAR 340-093-0050 where the compost is applied primarily on the subject farm or used to manage and dispose of by-products generated on the subject farm. Excess compost may be sold to neighboring farm operations in the local area and shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility.

(b) Composting operations and facilities allowed on land not defined as high-value farmland shall be limited to the composting operations and facilities allowed by subsection (29)(a) of this rule or that require a permit from the Department of Environmental Quality under OAR 340-093-0050. Buildings and facilities used in conjunction with the composting operation shall only be those required for the operation of the subject facility. Onsite sales shall be limited to bulk loads of at least one unit (7.5 cubic yards) in size that are transported in one vehicle.

(30) The County governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

(31) Public parks including only the uses specified under OAR 660-034-0035 or 660-034-0040, whichever is applicable.

(32) Utility facility service lines are utility lines and accessory facilities or structures that end at the point where the utility service is received by the customer and that are located on one or more of the following:

(a) A public right of way;

(b) Land immediately adjacent to a public right of way, provided the written consent of all adjacent property owners has been obtained; or

(c) The property to be served by the utility.

(33) An outdoor mass gathering as defined in ORS 433.735 or other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120 hours in any three month period is not a "land use decision" as defined in ORS 197.015(10) or subject to review under this Division.

(34) Any gathering subject to review by a county planning commission under the provisions of ORS 433.763. These gatherings and any part of which is held in open spaces are those of more than 3,000 persons which continue or can reasonably be expected to continue for more than 120 hours within any three-month period.

(35)(a) As part of the conditional use approval process under ORS 215.296 and OAR 660-033-0130(5), for the purpose of verifying the existence, continuity and nature of the business described in ORS 215.213(2)(w) or 215.283(2)(y), representatives of the business may apply to the county and submit evidence including, but not limited to, sworn affidavits or other documentary evidence that the business qualifies; and

(b) Alteration, restoration or replacement of a use authorized in ORS 215.213(2)(w) or 215.283(2)(y) may be altered, restored or replaced pursuant to ORS 215.130(5), (6) and (9).

(36) For counties subject to ORS 215.283 and not 215.213, a community center authorized under this section may provide services to veterans, including but not limited to emergency and transitional shelter, preparation and service of meals, vocational and educational counseling and referral to local, state or federal agencies providing medical, mental health, disability income replacement and substance abuse services, only in a facility that is in existence on January 1, 2006. The services may not include direct delivery of medical, mental health, disability income replacement or substance abuse services.

(37) For purposes of this rule a wind power generation facility includes, but is not limited to, the following system components: all wind turbine towers and concrete pads, permanent meteorological towers and wind measurement devices, electrical cable collection systems connecting wind turbine towers with the relevant power substation, new or expanded private roads (whether temporary or permanent) constructed to serve the wind power generation facility, office and operation and maintenance buildings, temporary lay-down areas and all other necessary appurtenances. A proposal for a wind power generation facility shall be subject to the following provisions:

(a) For high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that all of the following are satisfied:

(A) Reasonable alternatives have been considered to show that siting the wind power generation facility or component thereof on high-value farmland soils is necessary for the facility or component to function properly or if a road system or turbine string must be placed on such soils to achieve a reasonably direct route considering the following factors:

(i) Technical and engineering feasibility;

(ii) Availability of existing rights of way; and

(iii) The long term environmental, economic, social and energy consequences of siting the facility or component on alternative sites, as determined under OAR 660-033-0130(37)(a)(B).

(B) The long-term environmental, economic, social and energy consequences resulting from the wind power generation facility or any components thereof at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other agricultural lands that do not include high-value farmland soils.

(C) Costs associated with any of the factors listed in OAR 660-033-0130(37)(a)(A) may be considered, but costs alone may not be the only consideration in determining that siting any component of a wind power generation facility on high-value farmland soils is necessary.

(D) The owner of a wind power generation facility approved under OAR 660-033-0130(37)(a) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(E) The criteria of OAR 660-033-0130(37)(b) are satisfied.

(b) For arable lands, meaning lands that are cultivated or suitable for cultivation, including high-value farmland soils described at ORS 195.300(10), the governing body or its designate must find that:

(A) The proposed wind power facility will not create unnecessary negative impacts on agricultural operations conducted on the subject property. Negative impacts could include, but are not limited to, the unnecessary construction of roads, dividing a field or multiple fields in such a way that creates small or isolated pieces of property that are more difficult to farm, and placing wind farm components such as meteorological towers on lands in a manner that could disrupt common and accepted farming practices; and

(B) The presence of a proposed wind power facility will not result in unnecessary soil erosion or loss that could limit agricultural productivity on the subject property. This provision may be satisfied by the submittal and county approval of a soil and erosion control plan prepared by an adequately qualified individual, showing how unnecessary soil erosion will be avoided or remedied and how topsoil will be stripped, stockpiled and clearly marked. The approved plan shall be attached to the decision as a condition of approval; and

(C) Construction or maintenance activities will not result in unnecessary soil compaction that reduces the productivity of soil for crop production. This provision may be satisfied by the submittal and county approval of a plan prepared by an adequately qualified individual, showing how unnecessary soil compaction will be avoided or remedied in a timely manner through deep soil decompaction or other appropriate practices. The approved plan shall be attached to the decision as a condition of approval; and

(D) Construction or maintenance activities will not result in the unabated introduction or spread of noxious weeds and other undesirable weeds species. This provision may be satisfied by the submittal and county approval of a weed control plan prepared by an adequately qualified individual that includes a long-term maintenance agreement. The approved plan shall be attached to the decision as a condition of approval.

(c) For nonarable lands, meaning lands that are not suitable for cultivation, the governing body or its designate must find that the requirements of OAR 660-033-0130(37)(b)(D) are satisfied.

(d) In the event that a wind power generation facility is proposed on a combination of arable and nonarable lands as described in OAR 660-033-0130(37)(b) and (c) the approval criteria of OAR 660-033-0130(37)(b) shall apply to the entire project.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040 & 215.213

Hist.: LCDC 6-1992, f. 12-10-92, cert. ef. 8-7-93; LCDC 3-1994, f. & cert. ef. 3-1-94; LCDC 6-1994, f. & cert. ef. 6-3-94; LCDC 8-1995, f. & cert. ef. 6-29-95; LCDC 5-1996, f. & cert. ef. 12-23-96; LCDD 5-1997, f. & cert. ef. 12-23-97; LCDD 2-1998, f. & cert. ef. 6-1-98; LCDD 5-2000, f. & cert. ef. 4-24-00; LCDD 9-2000, f. & cert. ef. 11-3-00; LCDD 1-2002, f. & cert. ef. 5-22-02; LCDD 1-2004, f. & cert. ef. 4-30-04; LCDD 2-2006, f. & cert. ef. 2-15-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 5-2008, f. 12-31-08, cert. ef. 1-2-09; LCDD

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5-2009, f. & cert. ef. 12-7-09; LCDD 6-2010, f. & cert. ef. 6-17-10; LCDD 7-2010(Temp), f. & cert. ef. 6-17-10 thru 11-30-10

Land Use Board of Appeals
Chapter 661

Rule Caption: Amends LUBA's administrative rules regarding filing, service, reply briefs, costs, intervention, and transfer from DLCD.

Adm. Order No.: LUBA 1-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 5-1-2010

Rules Amended: 661-001-0000, 661-010-0000, 661-010-0015, 661-010-0021, 661-010-0025, 661-010-0026, 661-010-0030, 661-010-0035, 661-010-0039, 661-010-0040, 661-040-0045, 661-010-0050, 661-010-0052, 661-010-0055, 661-010-0065, 661-010-0067, 661-010-0075

Subject: The following summarizes the major substantive amendments:

 OAR 661-001-0000 is being amended to conform to the timing provisions of proposed rulemaking with recent statutory changes and to update the mailing list of parties entitled to notice.

 OAR 661-010-0000 is being amended to reflect the new effective date of the rules.

 OAR 661-010-0015 is being amended to specify what will be considered as proof of mailing to comply with LUBA's deadlines. Clarifies the procedures that LUBA will take when it receives a Notice of Intent to Appeal without the required filing fee. The deposit for costs shall also be raised from \$150 to \$200.

 OAR 661-010-0021 is being amended to clarify that filing or refiling of a Notice of Intent to Appeal may be accomplished via U.S. mail on or before the due date. Also, the rule is being amended to clarify that an intervenor need not file a new motion to intervene when the petitioner files an amended notice of intent to appeal or if the petitioner refiles the original notice of intent to appeal.

 OAR 661-010-0025 is being amended to increase the type of media that LUBA will accept as the local record. The requirements for the table of contents of a record are also being amended to require that any attached exhibits be listed separately at the end of the table of contents. Amendment allows parties to accept electronic versions of the record. Amendment also provides LUBA will have discretion to accept a record with minor defects.

 OAR 661-010-0026 is being amended to require a governing body's legal council to file a response or advise LUBA of the parties' efforts to resolve a record objection within 14 days of the filing of a record objection.

 OAR 661-010-0030 is being amended to only allow cross assignments of error if they are presented in a cross petition for review. Amendment also requires that maps be included when helpful in illustrating material facts.

 OAR 661-010-0035 is being amended to clarify that cross assignments of error are not allowed in respondent's briefs.

 OAR 661-010-0039 is being amended require that a reply brief be filed within seven days of the respondent's brief and to clarify how a party may respond to an amicus brief or a state agency brief.

 OAR 661-010-0040 is being amended to limit the time that petitioner may reserve for rebuttal to 10 minutes and limits the use of rebuttal time to address arguments raised by respondent(s).

 OAR 661-010-0045 is being amended to provide LUBA with discretion to take evidence when there is a jurisdictional dispute. Rule is also being amended to provide LUBA with the ability to order the time to continue to run while the board addresses a motion to take evidence.

 OAR 661-010-0050 is being amended to clarify that intervention in an appeal that is consolidated with other appeals does not allow for intervention in the other appeals. Rule is also being amended to clarify that an intervenor need not file new motions to intervene when

an amended notice of intent to appeal is filed or the original notice of intent to appeal is refilled.

 OAR 661-010-0052 is being amended to clarify when an amicus brief must be filed.

 OAR 661-010-0055 is being amended to clarify that consolidation of appeals does not affect the status of the parties to each appeal.

 OAR 661-010-0065 is being amended to change the amount of time for filing certain motions from 10 days to 14 days to conform to other time limits.

 OAR 661-010-0067 is being amended to provide for an automatic time extension for filing a Petition for Review when the parties agree to an extension regarding a record objection.

 OAR 661-010-0075 is being amended to raise the recoverable copying costs from \$0.20 to \$0.25 per page. Rule amendment also clarifies when a document will be deemed received by LUBA. The rule amendment further clarifies that the lead petitioner shall be responsible for notifying the other petitioners of documents and other communications that they receive from the Board. Finally, the rule is being amended to provide how LUBA will process an appeal that is transferred from the Oregon Department of Land Conservation and Development.

Rules Coordinator: William F. Wilson—(503) 378-2986

661-001-0000

Notice of Proposed Rulemaking

Prior to adoption, amendment or repeal of any rule, the Land Use Board of Appeals shall give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date.

(2) By mailing a copy of notice to persons on the Land Use Board of Appeals' mailing list established pursuant to ORS 183.335(8) at least 28 days prior to the effective date.

(3) By mailing or furnishing a copy of the notice to members of the House of Representatives and the Senate required by ORS 183.335(15).

(4) By mailing or furnishing a copy of the notice to:

- (a) Associated Press;
- (b) Association of Oregon Counties;
- (c) League of Oregon Cities;
- (d) Associated Oregon Industries;
- (e) Home Builders Association of Metropolitan Portland;
- (f) Oregon Building Industries Association;
- (g) 1000 Friends of Oregon;
- (h) Oregonians In Action;
- (i) Oregon Association of Realtors;
- (j) Oregon State Bar, Real Estate and Land Use Section; and
- (k) Oregon Department of Land Conservation and Development.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist.: LUBA 1-1980(Temp), f. & ef. 4-22-80; LUBA 3-1980, f. & ef. 8-6-80; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0000

Introduction

Scope of Rules and Effective Date: All proceedings commenced by a notice of intent to appeal filed after June 30, 2010 shall be governed by these rules. Any proceedings commenced by a notice of intent to appeal filed on or before June 30, 2010 shall be governed by OAR 661 010 0005 through 661 010 0075 as effective January 1, 2002.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.805

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 2-1983(Temp), f. & ef. 10-5-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0015

Notice of Intent to Appeal

(1) Filing of Notice:

(a) The Notice, together with two copies, and the filing fee and deposit for costs required by section (4) of this rule, shall be filed with the Board on or before the 21st day after the date the decision sought to be reviewed becomes final or within the time provided by ORS 197.830(3)-(5). A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed with the Board on or before the 21st day after the date the decision sought

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f. & cert. ef. 8-5-09 thru 12-31-09; LUBA 2-2009, f. 12-30-09, cert. ef. 1-1-10; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

to be reviewed is mailed to parties entitled to notice under ORS 197.615. A Notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

(b) The date of filing a notice of intent to appeal is the date the Notice is received by the Board, or the date the Notice is mailed, provided it is mailed by registered or certified mail, and the party filing the Notice has proof from the post office of such mailing date. If the date of mailing is relied upon as the date of filing, the date of the receipt stamped by the United States Postal Service showing the date mailed and the certified or registered number is the date of filing.

(c) If a Notice is received without payment of the fee and deposit required by section (4) of this rule, the petitioner will be given an opportunity to submit the required fee and deposit. If the filing fee and deposit for costs are not received within the time set by the Board, the Board shall dismiss the appeal.

(d) If the Board determines that a Notice identifies more than one final decision as the subject of appeal, the Board shall notify the petitioner. The Board shall dismiss the Notice if the petitioner fails to submit within the date specified by the Board either a written election to appeal only one decision, or a separate Notice and separate filing fee and deposit, as required by section (4) of this rule, for each additional decision.

(2) Service of Notice: The Notice shall be served on the governing body, the governing body's legal counsel, and all persons identified in the Notice as required by subsection (3)(f) of this rule on or before the date the notice of intent to appeal is required to be filed. Service of the Notice as required by this section may be in person or by first class mail. The date of serving such notice shall be the date of mailing.

(3) Contents of Notice: The Notice shall be substantially in the form set forth in Exhibit 1 and shall contain:

(a) A caption which sets forth the name(s) of the person(s) filing the Notice, identifying the person(s) as petitioner(s), and the name of the governing body, identifying the governing body as respondent;

(b) Below the caption the heading "Notice of Intent to Appeal";

(c) The full title of the decision to be reviewed as it appears on the final decision;

(d) The date the decision to be reviewed became final;

(e) A concise description of the decision to be reviewed, or a copy of either the notice of decision or the decision to be reviewed;

(f) The name, address and telephone number of each of the following:

(A) The Petitioner. If the petitioner is not represented by an attorney, the petitioner's name, address and telephone number shall be included. If an attorney represents the petitioner, the attorney's name, address and telephone number shall be substituted for that of the petitioner. If two or more petitioners are unrepresented by an attorney, one petitioner shall be designated as the lead petitioner, but the Notice shall include the names, addresses, and telephone numbers of all such unrepresented petitioners. See OAR 661-010-0075(7)(a);

(B) The governing body and the governing body's legal counsel;

(C) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney before the governing body, then the name, address and telephone number of the applicant's attorney shall also be included;

(D) Any other person to whom written notice of the land use decision or limited land use decision was mailed as shown on the governing body's records. The telephone number may be omitted for any such person.

(g) A statement advising all persons, other than the governing body, that in order to participate in the review proceeding a person must file a motion to intervene pursuant to OAR 661-010-0050.

(h) On the last page, a signature by each petitioner, or the attorney representing that petitioner, on whose behalf the Notice is filed.

(i) Proof of service upon all persons required to be named in the Notice. See Exhibit 1.

(4) Filing Fee and Deposit for Costs: The Notice shall be accompanied by a filing fee of \$200 and a deposit for costs in the amount of \$200 payable to the Land Use Board of Appeals. One check, State of Oregon purchase order or money order for \$400 may be submitted. If a check providing the filing fee or deposit for costs or both is returned for insufficient funds and the filing fee and deposit for costs are not paid within the time set by the Board, the Board shall dismiss the appeal. Cash shall not be accepted.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.620, 197.830(1) & (9)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2009(Temp),

661-010-0021

Withdrawal of Decision for Reconsideration

(1) If a local government or state agency, pursuant to ORS 197.830(13)(b), withdraws a decision for the purposes of reconsideration, it shall file a notice of withdrawal with the Board on or before the date the record is due. A copy of the decision on reconsideration shall be filed with the Board within 90 days after the filing of the notice of withdrawal or within such other time as the Board may allow.

(2) The filing of a notice of withdrawal under section (1) of this rule shall suspend proceedings on the appeal until a decision on reconsideration is filed with the Board, or the time designated therefor expires, unless otherwise ordered by the Board. If no decision on reconsideration is filed within the time designated therefor, the Board shall issue an order restarting the appeal.

(3) A copy of the decision on reconsideration under section (1) of this rule shall be filed with the Board within 7 days after the local government or state agency issues the decision on reconsideration and copies of the decision on reconsideration shall be served on all parties. The first page of the decision on reconsideration, or an accompanying transmittal letter, shall indicate the title and case number of the pending appeal before the Board.

(4) Petitioner(s) may seek review of the decision on reconsideration as provided in section (5) of this rule. Any other person may file a notice of intent to appeal the decision on reconsideration as provided in OAR 661-010-0015. If such an appeal is filed, and a petitioner files an amended notice of intent to appeal or refiles the original notice of intent to appeal as provided in section (5) of this rule, any party may move to consolidate the appeals challenging the decision on reconsideration as provided in OAR 661 010-0055.

(5) After the filing of a decision on reconsideration:

(a) If the petitioner wishes review by the Board of the decision on reconsideration:

(A) Except as provided in paragraph (B) of this subsection, the petitioner shall file an amended notice of intent to appeal together with two copies within 21 days after the decision on reconsideration is received by the Board.

(B) In the event the local government or state agency affirms its decision or modifies its decision with only minor revisions, the petitioner may refile the original notice of intent to appeal, with the date of the decision on reconsideration indicated thereon, together with two copies within 21 days after the decision on reconsideration is received by the Board.

(b) Refiling of the original notice of intent to appeal or filing of an amended notice of intent to appeal is accomplished by delivery of the Notice to the Board, or receipt of the Notice by the Board, on or before the due date. Filing or refiling may also be accomplished by mailing on or before the due date by first-class, certified or registered mail.

(c) An amended notice of intent to appeal or a refiled notice of intent to appeal under paragraphs (A) and (B) of subsection 5(a) of this rule shall conform with the requirements of OAR 661-010-0015(3) and shall be served on the following:

(A) All parties to the appeal suspended pursuant to section (2) of this rule;

(B) The applicant, if any (and if other than the petitioner). If an applicant was represented by an attorney before the governing body, then the name, address and telephone number of the applicant's attorney shall also be included;

(C) Any other person to whom written notice of the original or reconsidered land use decision or limited land use decision was mailed as shown on the governing body's records. The telephone number may be omitted for any such person.

(d) No additional filing fee or deposit for costs shall be required to refile the original notice of intent to appeal or file an amended notice of intent to appeal under subsection (5)(a) of this rule.

(e) If no amended notice of intent to appeal is filed or no original notice of intent to appeal is refiled, as provided in subsection (5)(a) and (b) of this rule, the appeal will be dismissed.

(f) Parties who have already intervened in the appeal need not file new motions to intervene when an amended notice of intent to appeal is filed or the original notice of intent to appeal is refiled.

(6) The local government or state agency shall, within 21 days after service of the amended notice of intent to appeal or refiled original notice of intent to appeal under subsection (5)(a) of this rule, transmit to the Board a certified copy of the record of the proceeding under review in accordance with OAR 661-010-0025. The record submitted by the local government or

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state agency in an appeal of a decision on reconsideration shall include the record of the original decision and the decision on reconsideration.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830(13)(b)

Hist.: LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0025

Record

(1) Contents of Record: Unless the Board otherwise orders, or the parties otherwise agree in writing, the record shall include at least the following:

(a) The final decision including any findings of fact and conclusions of law.

(b) All written testimony and all exhibits, maps, documents or other written materials specifically incorporated into the record or placed before, and not rejected by, the final decision maker, during the course of the proceedings before the final decision maker.

(c) Minutes and tape, CD, DVD or other media recordings of the meetings conducted by the final decision maker as required by law, or incorporated into the record by the final decision maker. A verbatim transcript of media recordings shall not be required, but if a transcript has been prepared by the governing body, it shall be included. If a verbatim transcript is included in the record, the media recordings from which that transcript was prepared need not be included in the record, unless the accuracy of the transcript is challenged.

(d) Notices of proposed action, public hearing and adoption of a final decision, if any, published, posted or mailed during the course of the land use proceeding, including affidavits of publication, posting or mailing. Such notices shall include any notices concerning amendments to acknowledged comprehensive plans or land use regulations given pursuant to ORS 197.610(1) or 197.615(1) and (2).

(2) Transmittal of Record: The governing body shall, within 21 days after service of the Notice on the governing body, transmit to the Board a certified copy of the record of the proceeding under review. The governing body may, however, retain any large maps, media recordings, or difficult-to-duplicate documents and items until the date of oral argument. Transmittal of the record is accomplished by delivery of the record to the Board, or by receipt of the record by the Board, on or before the due date.

(3) Service of Record:

(a) Contemporaneously with transmittal, the governing body shall serve a paper copy of the record, exclusive of large maps, media recordings, and difficult-to-duplicate documents and items, on the petitioner or the lead petitioner, if one is designated. The governing body shall also serve a paper copy of the record on any other party, including intervenors-petitioner, requesting a copy provided such other party reimburses the governing body for the reasonable expense incurred in copying the record. The governing body shall also serve a copy of any media recording included in the record, or any recording from which a transcript included in the record was prepared, on any party requesting such a copy, provided such party reimburses the governing body for the reasonable expense incurred in copying the recording.

(b) By prior agreement of the party to be served, service of the record as described in OAR 661-010-0025(3)(a) may be in an electronic format instead of a paper copy. If copies of the record are served on the parties in electronic format only, the local government may not recover copying costs under OAR 661-010-0075(1)(b)(B) for such electronic copies of the record.

(4) Specifications of Record:

(a) The record, including any supplements or amendments, shall:

(A) Be filed in a suitable folder; the cover shall bear the title of the case as it appears in the Notice or in the Board's order consolidating multiple appeals, and the Board's numerical designation for the case, and shall indicate the numerical designation given the land use decision or limited land use decision by the governing body; if the record consists of multiple volumes, the cover shall indicate the page numbers contained in each volume;

(B) Begin with a table of contents, listing each item contained therein, and the page of the record where the item begins (see Exhibit 2). Where a listed item includes attached exhibits, the exhibits shall be separately listed. Each large map, media recording, item or document retained by the governing body under section (2) of this rule shall be separately listed at the end of the table of contents;

(C) Be securely fastened on the left side;

(D) Have pages numbered consecutively, with the page number at the bottom outside corner of each page;

(E) Be arranged in inverse chronological order, with the most recent item first. Exhibits attached to a record item shall be included according to the numerical or alphabetical order in which they are attached, not the date of the exhibits. Upon motion of the governing body, the Board may allow the record to be organized differently.

(b) Where the record includes the record of a prior appeal to this Board, the table of contents shall specify the LUBA number of the prior appeal, and indicate that the record of the prior appeal is incorporated into the record of the current appeal.

(c) A record that does not substantially conform to the preceding requirements may be rejected by the Board.

(5) If no record objection is filed and the governing body transmits an amendment to the record, the date the amendment is received by the Board shall be considered the date the record is received for the purpose of computing time limits as required by these rules.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830(10)(a), 197.830(14) & 197.835

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1995, f. & cert. ef. 2-6-95; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0026

Objections to the Record

(1) Before filing an objection to the record, a party shall attempt to resolve the matter with the governing body's legal counsel. The objecting party shall include a statement of compliance with this section at the same time the objection is filed. The Board may deny any objection to the record that does not comply with this rule.

(2) An objection to the record or an objection to an amendment or supplement to the record shall be filed with the Board within 14 days of the date appearing on the notice of record transmittal sent to the parties by the Board. A party may file a record objection while continuing to resolve objections with the governing body's legal counsel. Objections may be made on the following grounds:

(a) The record does not include all materials included as part of the record during the proceedings before the final decision maker. The omitted item(s) shall be specified, as well as the basis for the claim that the item(s) are part of the record.

(b) The record contains material not included as part of the record during the proceedings before the final decision maker. The item(s) not included as part of the record during the proceedings before the final decision maker shall be specified, as well as the bases for the claim that the item(s) are not part of the record.

(c) The minutes or transcripts of meetings or hearings are incomplete or do not accurately reflect the proceedings.

(d) The record does not conform to the requirements of OAR 661-010-0025(4).

(3) An objection on grounds that the minutes or transcripts are incomplete or inaccurate shall demonstrate with particularity how the minutes or transcripts are defective and shall explain with particularity why the defect is material. Upon such demonstration regarding contested minutes, the Board shall require the governing body to produce a transcript of the relevant portion of the proceeding, if an audiotape recording or other type of recording is available. Upon such demonstration regarding contested transcripts, the Board shall require the governing body to produce a more complete or amended transcript.

(4) A party may, within 14 days from the date of service of a record objection, file a response. The governing body's legal counsel shall, within 14 days of the filing of a record objection, either file a response to the record objection or advise the Board in writing of the status of the parties' efforts to resolve the record objection.

(5) The Board may, at its discretion, conduct a telephone conference with the parties to consider any objections to the record. A party desiring a telephone conference on an objection to the record shall include a request for a telephone conference in its objection to the record or response.

(6) If an objection to the record is filed, the time limits for all further procedures under these rules shall be suspended. When the objection is resolved, the Board shall issue an order declaring the record settled and setting forth the schedule for subsequent events. Unless otherwise provided by the Board, the date of the Board's order shall be deemed the date of receipt of the record for purposes of computing subsequent time limits.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830(10)(a), 197.830(14) & 197.835

Hist.: LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

ADMINISTRATIVE RULES

661-010-0030

Petition for Review

(1) Filing and Service of Petition: The petition for review together with four copies shall be filed with the Board within 21 days after the date the record is received or settled by the Board. See OAR 661 010-0025(2) and 661-010-0026(6). The petition shall also be served on the governing body and any party who has filed a motion to intervene. Failure to file a petition for review within the time required by this section, and any extensions of that time under OAR 661-010-0045(9) or 661-010-0067(2), shall result in dismissal of the appeal and forfeiture of the filing fee and deposit for costs to the governing body. See OAR 661 010 0075(1)(c).

(2) Specifications of Petition: The petition for review shall:

(a) Begin with a table of contents;

(b) Not exceed 50 pages, exclusive of appendices, unless permission for a longer petition is given by the Board;

(c) Have blue front and back covers of at least 65-pound weight paper. The front cover page shall state the full title of the proceeding, and the names, addresses and telephone numbers of all parties unrepresented by an attorney. If a party is represented by an attorney, the name, address and telephone number of the attorney shall be substituted for the party. If there is more than one petitioner, the cover page shall specify which petitioner(s) are filing the petition. An intervenor shall be designated as either petitioner or respondent in accordance with OAR 661-010-0050;

(d) Be typewritten or word-processed in proportionately spaced font such as Times New Roman no smaller than 12 point for text and 10 point for footnotes;

(e) Be double spaced, except that quotations and footnotes may be single-spaced with double space above and below each paragraph of quotation;

(f) Have text printed on only one side of the page; however, text may be printed on both sides of the page if the paper is sufficiently opaque to prevent material on one side from showing through, and the petition is bound along the left-hand margin so that the pages lie flat when open;

(g) Be printed on 8 1/2 by 11 inch paper, with numbers for each line of text;

(h) Have inside margins of 1 1/4 inches, outside margins of 1 inch, top and bottom margins of 3/4 inch; and

(i) Be signed on the last page by the author. In cases where multiple unrepresented petitioners or intervenors-petitioner file a single petition for review, the petition for review shall be signed by all petitioners or intervenors-petitioner who wish to join the petition for review.

(3) If the Board determines that the petition for review fails to conform with the requirements of section (2) of this rule, it shall notify the author, and a brief conforming with the requirements of section (2) shall be filed within three (3) days of notification by the Board. The Board may refuse to consider a brief that does not substantially conform to the requirements of this rule.

(4) Contents of Petition: The petition for review shall:

(a) State the facts that establish petitioner's standing;

(b) Present a clear and concise statement of the case, in the following order, with separate section headings:

(A) The nature of the land use decision or limited land use decision and the relief sought by petitioner;

(B) A summary of the arguments appearing under the assignments of error in the body of the petition;

(C) A summary of the material facts. The summary shall be in narrative form with citations to the pages of the record where the facts alleged can be found. Where there is a map in the record that helps illustrate the material facts, the petitioner shall include a copy of that map in the summary of the material facts or attach it as an appendix to the petition.

(c) State why the challenged decision is a land use decision or a limited land use decision subject to the Board's jurisdiction;

(d) Set forth each assignment of error under a separate heading. Where several assignments of error present essentially the same legal questions, the argument in support of those assignments of error shall be combined;

(e) Contain a copy of the challenged decision, including any adopted findings of fact and conclusions of law; and

(f) Contain a copy of any comprehensive plan provision, ordinance or other provision of local law cited in the petition, unless the provision is quoted verbatim in the petition.

(5) The petition for review may include appendices containing verbatim transcripts of relevant portions of media recordings that are part of the record.

(6) Amended Petition: A petition for review which fails to comply with section (4) of this rule may, with permission of the Board, be amended. The Board shall determine whether to allow an amended petition for review to be filed in accordance with OAR 661-010-0005.

(7) Cross Petition: Any respondent or intervenor-respondent who desires reversal or remand of an aspect of the decision on appeal regardless of the outcome under the petition for review may file a cross petition for review that includes one or more assignments of error. The cross petition for review may also include contingent cross-assignments of error, clearly labeled as such, that the Board will address only if the decision on appeal is reversed or remanded under the petition for review. The cover page shall identify the petition as a cross petition and the party filing the cross petition. The cross petition shall be filed within the time required for filing the petition for review and must comply in all respects with the requirements of this rule governing the petition for review, except that a notice of intent to appeal need not have been filed by such party.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830(11), (12) & (13)(a)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0035

Respondent's Brief

(1) Filing and Service of Brief: Unless otherwise provided by the Board, respondent's brief together with four copies shall be filed within 42 days after the date the record is received or settled by the Board. See OAR 661-010-0025(2) and 661-010-0026(6). A copy of the respondent's brief shall be served on the petitioner or the lead petitioner, if one is designated, and all intervenors or the lead intervenor, if one is designated.

(2) Specifications of Brief: Respondent's brief shall conform to the specifications of the petition for review at OAR 661-010-0030(2), except that the brief shall have red front and back covers. If there is more than one respondent, the front cover page shall specify which respondent is filing the brief. Respondent's brief shall be subject to OAR 661-010-0030(3).

(3) Contents of Brief:

(a) The respondent's brief shall follow the form prescribed for the petition for review, but need not contain the final decision. The respondent shall specifically accept the petitioner's statement of the case or shall cite any alleged omissions or inaccuracies therein, and may state additional relevant facts or other matters. The statement shall be in narrative form with citations to the pages of the record where the facts alleged can be found.

(b) Respondent shall accept or challenge petitioner's statement of the Board's jurisdiction and petitioner's statement of standing. The basis for any challenge shall be stated. If respondent contends that the facts alleged by petitioner in support of standing are not true, respondent shall specify which allegations are contested.

(c) A response brief shall not include an assignment of error or cross-assignment of error.

(4) The respondent's brief may include appendices containing verbatim transcripts of media recordings that are part of the record.

(5) Amended Brief: The Board may allow the filing of an amended brief in accordance with OAR 661-010-0005.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830(13)(a)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0039

Reply Brief

A reply brief may not be filed unless permission is obtained from the Board. A request to file a reply brief shall be filed with the proposed reply brief together with four copies within seven days of the date the respondent's brief is filed. A reply brief shall be confined solely to new matters raised in the respondent's brief, state agency brief, or amicus brief. A reply brief shall not exceed five pages, exclusive of appendices, unless permission for a longer reply brief is given by the Board. A reply brief shall have gray front and back covers.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830(13)(a)

Hist.: LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

ADMINISTRATIVE RULES

661-010-0040

Oral Argument

(1) Only parties who have submitted briefs shall be allowed to present oral argument to the Board. The Board shall not consider issues raised for the first time at oral argument.

(2) If a party waives the right to present oral argument, the Board shall consider the case based on that party's brief and the briefs and oral arguments presented by other parties. The parties may, with consent of the Board, stipulate to submit a case to the Board on briefs without oral argument. If a party fails to appear at the time set for oral argument, the Board may deem the cause submitted without oral argument as to that party. A party's failure to so appear shall not preclude oral argument by other parties.

(3) The Board shall inform the parties of the time and place of oral argument. A party shall seek the consent of other parties before requesting a change in the scheduled time or date for oral argument.

(a) Unless the board otherwise orders, petitioner(s) shall be allowed 30 minutes for oral argument. Petitioner(s) may reserve up to 10 minutes for rebuttal following respondents' oral argument, to respond to arguments made during respondents' oral argument. Multiple petitioners shall share the 30 minutes.

(b) The respondent(s) shall be allowed 30 minutes to respond. Multiple respondents shall share the 30 minutes.

(c) The Board shall record all arguments, but any party may also arrange at its own expense to record the argument in some other manner.

(4) A state agency which has filed a brief pursuant to ORS 197.830(8) may move to argue orally before the Board. The motion shall be filed with the brief.

(5) Demonstrative exhibits presented at oral argument shall be limited to copies of materials already in the record, including reductions or enlargements, or materials created during the party's presentation at oral argument.

(6) The Board may conduct oral argument by telephone conference call.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830(13)(a)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0045

Taking Evidence Not in the Record

(1) Grounds for Motion to Take Evidence Not in the Record: The Board may, upon written motion, take evidence not in the record in the case of disputed factual allegations in the parties' briefs concerning unconstitutionality of the decision, standing, ex parte contacts, actions for the purpose of avoiding the requirements of ORS 215.427 or 227.178, or other procedural irregularities not shown in the record and which, if proved, would warrant reversal or remand of the decision. The Board may also upon motion or at its discretion take evidence to resolve disputes regarding the content of the record, requests for stays, attorney fees, or actual damages under ORS 197.845.

(2) Motions to Take Evidence:

(a) A motion to take evidence shall contain a statement explaining with particularity what facts the moving party seeks to establish, how those facts pertain to the grounds to take evidence specified in section (1) of this rule, and how those facts will affect the outcome of the review proceeding.

(b) A motion to take evidence shall be accompanied by:

(A) An affidavit or documentation that sets forth the facts the moving party seeks to establish; or

(B) An affidavit establishing the need to take evidence not available to the moving party, in the form of depositions or documents as provided in subsection (2)(c) or (d) of this rule.

(c) Depositions: the Board may order the testimony of any witness to be taken by deposition where a party establishes the relevancy and materiality of the anticipated testimony to the grounds for the motion, and the necessity of a deposition to obtain the testimony. Depositions under this rule shall be conducted in the same manner prescribed by law for depositions in civil actions (ORCP 38-40).

(d) Subpoenas: the Board shall issue subpoenas to any party upon a showing that the witness or documents to be subpoenaed will provide evidence relevant and material to the grounds for the motion. Subpoenas may also be issued under the signature of the attorney of record of a party. Witnesses appearing pursuant to subpoena, other than parties or employees of the Board, shall be tendered fees and mileage as prescribed by ORS 44.415(2) for witnesses in civil actions. The party requesting the subpoena

shall be responsible for service of the subpoena and tendering the witness and mileage fees to the witness.

(3) Any party may file a response within 14 days of the date of service of the motion to take evidence. The response shall specifically state what facts alleged in the motion are contested, with references to where contrary facts are found in the record or in affidavits or documents appended to the response.

(4) If the Board grants the motion to take evidence, the Board shall so notify the parties, and indicate whether it will decide the motion on the submitted materials, whether it will allow depositions or discovery of evidence under section (2), or whether it will schedule an evidentiary hearing on the motion.

(5) Conduct of Hearing:

(a) Where the Board schedules an evidentiary hearing, the hearing shall be conducted in the following order, insofar as the Board finds it practical:

(A) The moving party shall present its evidence including that of any witnesses;

(B) The other party(ies) shall have the opportunity to present evidence rebutting that of the moving party;

(C) The moving party may present surrebuttal evidence;

(b) Any witness is subject to cross examination by opposing parties.

(c) Any member of the Board may question any witness;

(d) The burden of presenting evidence in support of a fact or proposition rests on the proponent of the fact or proposition;

(e) The Board may continue a hearing, and may set time limits for any hearing;

(f) Exhibits shall be marked to identify the party offering the exhibits. The exhibits shall be preserved by the Board as part of the record.

(6) Evidentiary Rules:

(a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

(b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) All evidence not objected to shall be received by the Board, subject to the Board's power to exclude irrelevant, immaterial or unduly repetitious matter.

(d) Evidence objected to may be received by the Board. Rulings on the admissibility of such evidence, if not made at the hearing, shall be made at or before the time a final order is issued.

(e) Any time 14 days or more before a hearing, any party may serve on every other party an affidavit, certificate or other document the party proposes to introduce in evidence. Unless cross-examination of the affiant, certificate preparer or other document preparer or custodian is requested within seven days prior to hearing, the affidavit or certificate may be offered subject to the same standards and received with the same effect as oral testimony. If cross-examination is requested, and the requestor is informed within seven days prior to the hearing that the requested witness will not appear for cross-examination, the affidavit, certificate or other document may be received in evidence if the Board determines that the party requesting cross-examination would not be unduly prejudiced or injured by lack of cross-examination.

(7) Prehearing Conference: The Board, on its own motion or at the request of any party, may call a prehearing conference to consider:

(a) Simplification of the issues;

(b) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;

(c) Limitation of the number of witnesses;

(d) The form and substance of any prehearing order;

(e) Such other matters as may aid in the disposition of the appeal.

(8) Proposed Prehearing Order: The Board, with or without a prehearing conference, may require that the parties prepare and sign a proposed prehearing order to be filed with the Board on or before a date specified by the Board. The order shall contain:

(a) A statement of contentions of law of each party;

(b) A concise statement of all contentions of fact to be proved by each party;

(c) A statement of all agreed facts;

(d) A list of witnesses and a summary of their testimony;

(e) A list of exhibits and a statement of the contents of each;

(f) Such other matters as the Board may require in order to expedite the hearing and appeal.

(9) Effect on Time Limits: Unless the Board orders otherwise, the filing of a motion to take evidence shall suspend the time limits for all other events in the review proceeding, including the issuance of the Board's final

ADMINISTRATIVE RULES

order. If the Board grants the motion, the time limits for other events shall remain suspended until the Board issues its findings. Unless the parties agree otherwise, the Board shall schedule any evidentiary hearing not less than ten days after the order granting the motion to take evidence is issued. If the Board denies a motion to take evidence, the time for all other events will begin to run on the date the Board issues its order denying the motion, or on such other date as is specified in that order.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.835(2)(b)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0050

Intervention

(1) Standing to Intervene: The applicant and any person who appeared before the local government, special district or state agency may intervene in a review proceeding before the Board. Status as an intervenor is recognized when a motion to intervene is filed, but the Board may deny that status at any time.

(2) Motion to Intervene: A motion to intervene shall be filed within 21 days of the date the notice of intent to appeal is filed pursuant to OAR 661-010-0015, or the amended notice of intent to appeal is filed or original notice of intent to appeal is refiled pursuant to OAR 661-010-0021. When two or more intervenors join in a motion to intervene and are unrepresented by an attorney, a lead intervenor shall be designated as the contact person for the purpose of receiving documents from the Board and other parties. The motion to intervene (see Exhibit 3) shall:

(a) List the names, addresses, and telephone numbers of all persons moving to intervene. If an attorney represents the intervenor(s), the attorney's name, address and telephone number shall be substituted for that of the intervenor(s);

(b) State whether the party is intervening on the side of the petitioner or the respondent;

(c) State the facts which show the party is entitled to intervene, supporting the statement with affidavits or other proof;

(d) On the last page, be signed by each intervenor, or the attorney representing that intervenor, on whose behalf the motion to intervene is filed;

(e) Be served upon the Board and all parties.

(3) Filing Fee: A motion to intervene shall be accompanied by a filing fee of \$100 payable to the Land Use Board of Appeals. If a motion to intervene is received without payment of the filing fee or a check providing the filing fee is returned for insufficient funds, the intervenor will be given an opportunity to submit the required fee. If the filing fee is not paid within the time set by the Board, the Board shall deny the motion to intervene. Cash shall not be accepted.

(4) Intervention in an appeal that is consolidated with other appeals does not allow the intervenor to appear as a party with respect to those appeals in which the intervenor has not filed a timely motion to intervene.

(5) Parties who have already intervened in an appeal need not file new motions to intervene when an amended notice of intent to appeal is filed or the original notice of intent to appeal is refiled pursuant to OAR 661-010-0021.

(6) Intervenor's Brief:

(a) If intervention is sought as a petitioner, the brief shall be filed within the time limit for filing the petition for review, and shall satisfy the requirements for a petition for review in OAR 661-010-0030.

(b) If intervention is sought as a respondent, the brief shall be filed within the time for filing a respondent's brief and shall satisfy the requirements for a respondent's brief in OAR 661-010-0035.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.830(2) & (7)

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 4-1980, f. & ef. 9-8-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2009(Temp), f. & cert. ef. 8-5-09 thru 12-31-09; LUBA 2-2009, f. 12-30-09, cert. ef. 1-1-10; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0052

Amicus Participation

(1) A person or organization may appear as amicus only by permission of the Board on written motion. The motion shall set forth the interest of the movant and state reasons why a review of relevant issues would be significantly aided by participation of the amicus. A copy of the motion shall be served on all parties to the proceeding.

(2) Appearance as amicus shall be by brief only, unless the Board specifically authorizes or requests oral argument. An amicus brief shall be subject to the same rules as those governing briefs of parties to the appeal, and shall be filed together with four copies. Where amicus is aligned with the interests of the petitioner(s), the amicus brief is due seven days after the date the petition for review is due. In all other circumstances, the amicus brief is due within the time required for filing respondent's brief. No filing fee is required. An amicus brief shall have green front and back covers.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.805 & 197.830(13)(a)

Hist.: LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0055

Consolidation

The Board, at the request of any party or on its own motion, may consolidate two or more proceedings, provided the proceedings seek review of the same or closely related land use decision(s) or limited land use decision(s). Consolidation of appeals does not affect the status of the parties to each appeal. See OAR 661-010-0050(3).

Stat. Auth.: ORS 197.820(4)

Stats. Implemented: ORS 197.805

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0065

Motions

(1) When Motion is Appropriate: Unless these rules or applicable statutes provide another form of application, a request for an order or relief shall be made by filing a motion in writing for such order or relief. A motion shall show proof of service on all parties.

(2) Time of Filing: A party seeking to challenge the failure of an opposing party to comply with any of the requirements of statutes or Board rules shall make the challenge by motion filed with the Board and served on all parties within 14 days after the moving party obtains knowledge of such alleged failure. However, motions to dismiss for lack of jurisdiction may be filed at any time. An opposing party may, within 14 days from the date of service of a motion, file a response.

(3) How Submitted: Parties shall submit all motions without oral argument unless otherwise directed by the Board. A party that desires a telephone conference on a motion shall include a request for a telephone conference in its motion or response. The Board may, at its discretion, conduct a telephone conference with the parties to consider any motion.

(4) Effect of Filing Motion: Except as provided in OAR 661-010-0026(6) with regard to objections to the record and OAR 661-010-0045(9) with regard to motions to take evidence, or as may otherwise be ordered by the Board on its own motion, the filing of a motion shall not suspend the time limits for other events in the review proceeding.

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 197.805

Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0067

Extensions of Time

(1) In no event shall the time limit for the filing of the notice of intent to appeal be extended.

(2) Except as provided in this section and OAR 661-010-0045(9), in no event shall the time limit for the filing of the petition for review be extended without the written consent of all parties. Written consent may include facsimile signatures. The Board may, on a motion of a party or its own motion, extend the deadline for filing the petition for review to allow time to rule on a motion to dismiss. Written consent to extend the deadline for filing record objections shall automatically extend the deadline for filing the petition for review for the same number of days granted to extend the deadline for filing record objections, unless the consenting parties expressly provide otherwise.

(3) All other time limits may be extended upon written consent of all parties, the Board's motion or motion of a party. Written consent may include facsimile signatures.

(4) A motion for extension of time shall state the reasons for granting the extension and must be filed with the Board within the time required for performance of the act for which an extension of time is requested.

(5) Any agreement by the parties allowing an extension of time shall automatically extend the time for subsequent filings, as well as the issuance of the Board's final order by an amount of time equal to the extension agreed to by the parties.

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(6) In the event the Board extends the deadline for issuance of its final order without consent of the parties, it shall enter the findings required by ORS 197.840.

Stat. Auth.: ORS 183.545 & 197.820(4)
Stats. Implemented: ORS 197.830(13)(a)
Hist.: LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

661-010-0075

Miscellaneous Provisions

(1) Cost Bill and Attorney Fees

(a) Time for Filing: The prevailing party may file a cost bill or a motion for attorney fees, or both, no later than 14 days after the final order is issued. The prevailing party shall serve a copy of any such cost bill or motion for attorney fees on all parties.

(b) Recoverable Costs: Costs may be recovered only for the items set forth in this subsection.

(A) If the petitioner is the prevailing party, the petitioner may be awarded the cost of the filing fee.

(B) If the governing body is the prevailing party, the governing body may be awarded copying costs for the required number of copies of the record, at 25 cents per page, whether or not the governing body actively participated in the review.

(C) Costs awarded to the governing body pursuant to this section shall be paid from the deposit required by OAR 661 010 0015(4) and shall not exceed the amount of that deposit.

(c) Forfeit of Filing Fee and Deposit: If a record has been filed and a petition for review is not filed within the time required by these rules, and the governing body files a cost bill pursuant to this section requesting forfeiture of the filing fee and deposit, the filing fee and deposit required by OAR 661 010 0015(4) shall be awarded to the governing body as cost of preparation of the record. See OAR 661 010 0030(1).

(d) Return of Deposit: After any award of costs under subsection (b) of this section is made, any amount of the deposit remaining shall be returned to petitioner.

(e) Attorney Fees:

(A) Attorney fees shall be awarded by the Board to the prevailing party as specified in ORS 197.830(15)(b); a motion for attorney fees shall include a signed and detailed statement of the amount of attorney fees sought.

(B) Attorney fees shall be awarded to the applicant, against the governing body, if the Board reverses a land use decision or limited land use decision and orders a local government to approve a development application pursuant to ORS 197.835(10).

(C) Attorney fees shall be awarded to the applicant, against the person who requested a stay pursuant to ORS 197.845, if the Board affirms a quasi-judicial land use decision or limited land use decision for which such a stay was granted. The amount of the award shall be limited to reasonable attorney's fees incurred due to the stay request, and together with any actual damages awarded, shall not exceed the amount of the undertaking required under ORS 197.845(2).

(f) Responses and Objections: Any response to a motion for attorney fees, together with any objections to the detailed statement of the amount of attorney fees sought, shall be filed with the Board within 14 days after the date of service of the motion. Objections to the cost bill shall be filed with the Board within 14 days after the date of service of the cost bill.

(g) If a cost bill, a motion for attorney fees, or both are filed, and the Board's decision is appealed to the Court of Appeals, the Board shall act on the cost bill or motion for attorney fees after an appellate judgment is issued and any further Board proceedings necessitated by that judgment are concluded.

(2) Filing and Service:

(a) Filing:

(A) Documents may not be filed by facsimile. Documents filed with the Board may include facsimile signatures.

(B) Except as provided in OAR 661-010-0015(1)(b) with regard to the notice of intent to appeal, filing a document with the Board is accomplished by:

(i) Delivery to the Board on or before the date due; or

(ii) Mailing on or before the date due by first class mail with the United States Postal Service. If the date of mailing is relied upon as the date of filing, the date of the first class postmark on the envelope mailed to the Board is the date of filing.

(b) Service:

(A) Any document filed with the Board, other than the record as provided in OAR 661-010-0025(3), or the record after withdrawal for recon-

sideration as provided in OAR 661-010-0021(6), must also be served on all parties contemporaneously. Service on two or more petitioners unrepresented by an attorney is accomplished by serving the lead petitioner designated under OAR 661-010-0015(3)(f)(A). Service on two or more intervenors unrepresented by an attorney is accomplished by serving the lead intervenor designated under OAR 661-010-0050(2).

(B) Service may be in person, or by first-class mail. Mail service is complete on deposit in the mail.

(C) Service copies of documents other than the Notice or the record shall include a certificate showing the date of filing with the Board (see Exhibit 5).

(D) Documents filed with the Board shall contain either an acknowledgment of service by the person served or proof of service by a statement certified by the person who made service of the date of personal delivery or deposit in the mail, and the names and addresses of the persons served (see Exhibit 6).

(c) Recycled Paper: Parties filing anything with the Board, including but not limited to notices of intent to appeal, records, motions, and briefs, are encouraged to use recycled paper if recycled paper is readily available at a reasonable price in the party's community. Further, parties are encouraged to use paper containing the highest available content of post-consumer waste, as defined in ORS 279.545, that is recyclable in the office paper recycling program in the party's community.

(3) Number of Copies Required: Unless these rules provide otherwise, all documents filed with the Board shall be filed with one copy. No copy of a record transmitted pursuant to OAR 661-010-0025(2), or a record after withdrawal for reconsideration transmitted pursuant to OAR 661-010-0021(6), is required.

(4) Copying Fee: The following fees shall be charged for certified copies of Board nonexempt public records as defined in ORS 192.410, 192.501, 192.502, and 192.505:

(a) 25 cents per page for copies of any Board transcript or document of public record.

(b) \$10 for a copy of a cassette tape, compact disc or similar media disc in the record.

(c) \$20 for a copy of a videocassette tape in the record.

(d) The Board shall also charge the actual cost of copying and mailing oversized exhibits, plans or maps.

(5) Conferences: On its own motion or at the request of any party, the Board may conduct one or more conferences. Conferences may be by telephone. The Board shall provide reasonable notice advising all parties of the time, place and purpose of any conference.

(6) Appearances Before the Board: An individual shall either appear on his or her own behalf or be represented by an attorney. A corporation or other organization shall be represented by an attorney. In no event may a party be represented by someone other than an active member of the Oregon State Bar. In the event someone other than an active member of the Oregon State Bar files a notice of intent to appeal on behalf of a corporation, other organization, or another individual, the individual filing the notice of intent to appeal will be given an opportunity to provide an amended notice of intent to appeal that conforms with this section. If an amended notice of intent to appeal is not filed within the time set by the Board, the Board will dismiss the appeal.

(7) Lead Petitioner or Intervenor:

(a) A lead petitioner is responsible for notifying the other petitioners of documents and communications received from the Board and other parties, but each petitioner remains responsible for his or her own representation.

(b) A lead intervenor is responsible for notifying the other intervenors of documents and communications received from the Board and other parties, but each intervenor remains responsible for his or her own representation. A lead intervenor's responsibilities under this subsection extend only to intervenors who joined in the lead intervenor's motion to intervene and does not extend to intervenors who filed separate motions to intervene.

(8) Computation of Time: Time deadlines in these rules shall be computed by excluding the first day and including the last day. If the last day is Saturday, Sunday or other state or federal legal holiday, the act must be performed on the next working day.

(9) Address and Hours of the Board: The Board's address is Public Utility Commission Building, 550 Capitol Street NE, Suite 235, Salem, Oregon, 97301-2552. The telephone number is (503) 373-1265. The offices of the Board shall be open from 8:00 a.m. to 12:00 p.m., and 1:00 p.m. to 5:00 p.m. Monday through Friday.

(10) Citations to Board Decisions: Citations to Board decisions shall be in the following form:

Reported Cases: John Doe v. XYZ County, 5 Or LUBA 654 (1981).

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Unreported Cases: John Doe v. XYZ County, ___ Or LUBA ___ (LUBA No. 80-123, February 15, 1981).

(11) Motion to Transfer to Circuit Court:

(a) Any party may request, pursuant to ORS 34.102, that an appeal be transferred to the circuit court of the county in which the appealed decision was made, in the event the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in ORS 197.015(10) or (12).

(b) A request for a transfer pursuant to ORS 34.102 shall be initiated by filing a motion to transfer to circuit court not later than 14 days after the date a respondent's brief or motion that challenges the Board's jurisdiction is filed. If the Board raises a jurisdictional issue on its own motion, a motion to transfer to circuit court shall be filed not later than 14 days after the date the moving party learns the Board has raised a jurisdictional issue.

(c) If the Board determines the appealed decision is not reviewable as a land use decision or limited land use decision as defined in ORS 197.015(10) or (12), the Board shall dismiss the appeal unless a motion to transfer to circuit court is filed as provided in subsection (11)(b) of this rule, in which case the Board shall transfer the appeal to the circuit court of the county in which the appealed decision was made.

(12) Transfer from Circuit Court: When any appeal of a land use or limited land use decision is transferred to LUBA from circuit court, the petition for writ of review filed in the circuit court shall be treated as the notice of intent to appeal, and the case shall proceed as provided in LUBA's rules, subject to the following:

(a) No additional filing fee shall be required;

(b) After an appeal is transferred to LUBA, the Board, by letter, will establish a deadline for the petitioner to submit the deposit for costs and a deadline for the respondent to transmit the record.

(13) Transfer from the Oregon Department of Land Conservation and Development: Where the Director of the Oregon Department of Land Conservation and Development transfers a matter to LUBA pursuant to ORS 197.825(2)(c)(A), the case shall proceed as provided in LUBA's rules, subject to the following:

(a) The date of the notice from the Director making the transfer shall begin the running of a 21-day period within which one or more parties in the proceedings before the department may file a notice of intent to appeal with LUBA. A notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

(b) Except as provided in this section, the notice of intent to appeal shall conform to the requirements of OAR 661-010-0015, including payment of the filing fee and deposit for costs. The notice of intent to appeal shall identify the local government as the respondent, rather than the Oregon Department of Land Conservation and Development or the Land Conservation and Development Commission.

(c) On receipt of a notice of intent to appeal, the Board shall, by letter, establish a deadline for the respondent to file the portion of the local record necessary to review the transferred matter. In all other respects, an appeal of a transferred matter shall proceed according to LUBA's rules.

(14) All briefs and motions filed with the Board shall comply with the rules in OAR 661-010-0030(2) with respect to type size, spacing, paper size and printing, numbering and margins.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 183.545 & 197.820(4)

Stats. Implemented: ORS 34.102, 197.830(9), (13)(a) & (15), 197.835(10) & 197.845(3)
Hist.: LUBA 1-1979(Temp), f. & ef. 11-1-79; LUBA 2-1980, f. & ef. 4-29-80; LUBA 2-1981(Temp), f. & ef. 8-20-81; LUBA 1-1982(Temp), f. & ef. 5-19-82; LUBA 1-1983, f. & ef. 10-3-83; LUBA 1-1987, f. & ef. 12-30-87; LUBA 1-1989, f. & cert. ef. 11-30-89; LUBA 1-1992, f. & cert. ef. 1-21-92; LUBA 2-1992, f. & cert. ef. 3-19-92; LUBA 1-1994, f. & cert. ef. 6-22-94; LUBA 1-1998, f. 2-12-98, cert. ef. 3-1-98; LUBA 2-1998(Temp), f. & cert. ef. 6-15-98 thru 12-12-98; LUBA 3-1998, f. 12-1-98, cert. ef. 12-13-98; LUBA 1-2001, f. 10-15-01, cert. ef. 1-1-02; LUBA 1-2010, f. 6-30-10, cert. ef. 7-1-10

Office for Oregon Health Policy and Research Chapter 409

Rule Caption: Adoption of capitol project reporting requirements for Oregon hospitals.

Adm. Order No.: OHP 3-2010

Filed with Sec. of State: 6-24-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Adopted: 409-024-0000, 409-024-0110, 409-024-0120, 409-024-0130

Subject: The Office for Oregon Health Policy and Research (OHP) is adopting rules necessary to implement the capital project reporting requirement for hospitals mandated in ORS 442.362. The pur-

pose of these rules is to implement the capital project reporting, public disclosure, and other applicable mandates of House Bill 2009, which was enacted by the 75th Legislative Assembly. The proposed rules are intended to fulfill this mandate by prescribing the capital project information that is reported, how it is reported, and how the information is disclosed to the public.

Rules Coordinator: Zarie Haverkate—(503) 373-1574

409-024-0000

Definitions

The following definitions apply to OAR 409-024-0000 to 409-024-0130:

(1) "Capital project" has the meaning described in ORS 442.361.

(2) "Community benefits" mean programs or activities that provide treatment or promote health and healing as a response to identified community needs and are not provided primarily for marketing purposes or to increase market share.

(3) "Office" means the Office for Oregon Health Policy and Research.

(4) "Reporting entity" includes the following if licensed pursuant to ORS 441.015:

(a) A type A hospital as described in ORS 442.470.

(b) A type B hospital as described in ORS 442.470.

(c) A diagnostic-related group (DRG) hospital as described in ORS 442.361.

(d) An ambulatory surgical center as defined in ORS 442.015.

Stat. Auth.: ORS 442.362

Stat. Implemented: ORS 442.361 & 442.362

Hist.: OHP 3-2010, f. 6-24-10, cert. ef. 7-1-10

409-024-0110

Capital Project Report

(1) Each reporting entity must submit to the Office a report of pending or proposed capital projects using a Capital Project Reporting Form CPR-1 as defined by the Office. The report must be completed in accordance with instructions in the capital project reporting guidelines published on the Office's website.

(2) The Capital Project Reporting Form CPR-1 shall include but is not limited to

(a) A summary of the information posted by the reporting entity under ORS 442.362.

(b) The procedure that the reporting entity used to collect public comment.

(c) A summary of expected community benefits for the project.

(d) The estimated cost of the project.

(3) Capital project reports must be submitted to the Office no later than 30 days after financing for a project that has been approved for ambulatory surgical centers or within 30 days after the project has been approved by the hospital's board of directors or other governing body for hospitals. The report shall be considered submitted on the date the report is post-marked or electronically delivered to the Office, whichever is first.

(4) The Office shall maintain on its website a publicly available resource to enable interested parties to view capital project reports filed with the Office.

Stat. Auth.: ORS 442.362

Stat. Implemented: ORS 442.361 and 442.362

Hist.: OHP 3-2010, f. 6-24-10, cert. ef. 7-1-10

409-024-0120

Public Comments

(1) Each reporting entity must make available a means for interested persons to submit public comments on the capital project either on their website or by posting public notice in a major newspaper for a period of no less than seven days. Comments must be collected for a period of no less than 30 days and made available for public review.

(2) The hospital or ambulatory care center shall then notify the Office after the 30 day public comment if the hospital or ambulatory care center chooses to complete the project as is or if the project has changed and an expected completion date. The Office shall post this update on its website for 30 days.

Stat. Auth.: ORS 442.362

Stat. Implemented: ORS 442.361 & 442.362

Hist.: OHP 3-2010, f. 6-24-10, cert. ef. 7-1-10

409-024-0130

Civil Penalties

(1) If the Office learns that any reporting entity has failed to file a capital project report, the Office shall contact the reporting entity by certified

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mail requesting the unfiled report. If the reporting entity fails to reply within 30 calendar days or continues to be non-compliant with the reporting requirements, the Office shall assess a civil penalty pursuant to the following schedule:

(a) \$250 per day for the first five days of failure to file in accordance with ORS 442.991; and

(b) \$500 per day from the sixth day until filing in accordance with ORS 442.991 is completed.

(2) Any amount of civil penalty assessed by the Office may not be allowed as a reimbursable cost item and may not be recoverable from any category of payment source or patient.

Stat. Auth.: ORS 442.362

Stat. Implemented: ORS 442.361, 442.362 & 442.991

Hist.: OHP 3-2010, f. 6-24-10, cert. ef. 7-1-10

Rule Caption: Amendments to Health Care Acquired Infection Reporting and Public Disclosure Rules.

Adm. Order No.: OHP 4-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 409-023-0000, 409-023-0010

Subject: These proposed rules implement the health care acquired infection (HAI) reporting, public disclosure, and other applicable mandates of ORS 442.838, which was enacted by the 74th Legislative Assembly. These proposed rules are intended to fulfill the mandates by prescribing the HAIs that are reported, how they are reported, the health care facilities that report them, and how they are publicly disclosed.

Rules Coordinator: Zarie Haverkate—(503) 373-1574

409-023-0000

Definitions

The following definitions apply to OAR 409-023-0000 to 409-023-0035:

(1) “Administrator” means the administrator of the Office for Oregon Health Policy and Research as defined in ORS 442.011, or the administrator’s designee.

(2) “ASC” means ambulatory surgical center as defined in ORS 442.015(4) and that is licensed pursuant to ORS 441.015.

(3) “CBGB” means coronary bypass graft surgery with both chest and graft incisions, as defined in the NHSN Manual.

(4) “CDC” means the federal Centers for Disease Control and Prevention.

(5) “CLABSI” means central line associated bloodstream infection as defined in the NHSN Manual.

(6) “CMS” means the federal Centers for Medicare and Medicaid Services.

(7) “COLO” means colon procedures as defined in the NHSN Manual.

(8) “Committee” means the Health Care Acquired Infections Advisory Committee as defined in ORS 442.838.

(9) “Dialysis facility” means outpatient renal dialysis facility as defined in ORS 442.015(29).

(10) “Follow-up” means post-discharge surveillance intended to detect CBGB, COLO, HPRO, HYST, KRPO, and LAM surgical site infection (SSI) cases occurring after a procedure.

(11) “HAI” means health care acquired infection as defined in ORS 442.838.

(12) “Health care facility” means a facility as defined in ORS 442.015(16).

(13) “Hospital” means a facility as defined in ORS 442.015(19) and that is licensed pursuant to ORS 441.015.

(14) “HPRO” means hip prosthesis procedure as defined in the NHSN Manual.

(15) “HYST” means abdominal hysterectomy procedure as defined in the NHSN Manual.

(16) “ICU” means an intensive care unit as defined in the NHSN Manual.

(17) “KPRO” means knee prosthesis procedure as defined in the MHSN Manual.

(18) “LAM” means laminectomy procedure as defined in the NHSN Manual.

(19) “LTC facility” means long term care facility as defined in ORS 442.015(22).

(20) “MDS” means the Centers for Medicare and Medicaid Services’ minimum data set nursing home resident assessment and screening tool, version 2.0 or its successor, including but not limited to manuals, forms, software, and databases.

(21) “Medical ICU” means a non-specialty intensive care unit that serves 80% or more adult medical patients.

(22) “Medical/Surgical ICU” means a non-specialty intensive care unit that serves less than 80% of either adult medical, adult surgical, or specialty patients.

(23) “NHSN” means the CDC’s National Healthcare Safety Network.

(24) “NHSN Manual” means the Patient Safety Component Protocol of the NHSN manual, version March 2009 or its successor, as amended, revised, and updated from time to time.

(25) “NICU” means a specialty intensive care unit that cares for neonatal patients.

(26) “Office” means the Office for Oregon Health Policy and Research.

(27) “Oregon HAI group” means the NHSN group administered by the Office.

(28) “Patient information” means individually identifiable health information as defined in ORS 179.505(c).

(29) “Person” has the meaning as defined in ORS 442.015(30).

(30) “Procedure” means an NHSN operative procedure as defined in the NHSN Manual.

(31) “Provider” means health care services provider as defined in ORS 179.505(b).

(32) “QIO” means the quality improvement organization designated by CMS for Oregon.

(33) “RHQDAPU” means the Reporting Hospital Quality Data for Annual Payment Update initiative administered by CMS.

(34) “SCIP” means the Surgical Care Improvement Project.

(35) “SCIP-Inf-1” means the HAI process measure published by SCIP defined as prophylactic antibiotic received within one hour prior to surgical incision.

(36) “SCIP-Inf-2” means the HAI process measure published by SCIP defined as prophylactic antibiotic selection for surgical patients.

(37) “SCIP-Inf-3” means the HAI process measure published by SCIP defined as prophylactic antibiotics discontinued within 24 hours after surgery end time (48 hours for cardiac patients).

(38) “SCIP-Inf-4” means the HAI process measure published by SCIP defined as cardiac surgery patients with controlled 6 a.m. postoperative serum glucose.

(39) “SCIP-Inf-6” means the HAI process measure published by SCIP defined as surgery patients with appropriate hair removal.

(40) “SCIP-Inf-10” means the HAI process measure published by SCIP defined as surgery patients with perioperative temperature management.

(41) “Specialty ICU” means an intensive care unit with at least 80% of adults are specialty patients including but not limited to oncology, trauma, and neurology.

(42) “SSI” means a surgical site infection event as defined in the Patient Safety Component Protocol of the NHSN manual, version January 2008.

(43) “Staff” means any employee of a health care facility or any person contracted to work within a health care facility.

(44) “State agency” shall have the meaning as defined in ORS 192.410(5).

(45) “Surgical ICU” means a non-specialty intensive care unit that serves 80% or more adult surgical patients.

(46) “VLBW” means very low birth weight as defined by Vermont Oxford Network.

(47) “VON” means the Vermont Oxford Network or its successor.

Stat. Auth.: ORS 442.838 & 442.420

Stats. Implemented: ORS 179.505, 192.410, 192.496, 192.502, 442.400, 442.405, 442.015, 442.011 & 442.838

Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; OHP 1-2009, f. & cert. ef. 7-1-09; OHP 4-2010, f. 6-30-10, cert. ef. 7-1-10

409-023-0010

HAI Reporting for Hospitals

(1) Hospitals shall begin collecting data for HAI outcome and process measures for the HAI reporting program for services provided on and after January 1, 2009, except:

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(a) NICU shall begin collecting data for HAI outcome and process measures for the HAI reporting program for services provided on and after January 1, 2010.

(b) Hospitals shall report the SCIP-Inf-6 process measure for the HAI reporting program for services provided on and after January 1, 2010.

(c) Hospitals shall report the SCIP-4-Inf and SCIP-10-Inf process measures for services provided on and after January 1, 2011.

(d) Hospitals shall report the COLO, HPRO, HYST, and LAM outcome measures for services provided on and after January 1, 2011.

(2) Reportable HAI outcome measures are:

(a) SSIs for CBGB, COLO, HPRO, HYST, KPRO, and LAM procedures.

(b) CLABSI in medical ICUs, surgical ICUs, and combined medical/surgical ICUs.

(3) The infection control professional (ICP), as defined by the facility, shall actively seek out infections defined in sections (2)(a) and (b) of this rule during a patient's stay by screening a variety of data that may include but is not limited to:

(a) Laboratory;

(b) Pharmacy;

(c) Admission;

(d) Discharge;

(e) Transfer;

(f) Radiology;

(g) Imaging;

(h) Pathology; and

(i) Patient charts, including history and physical notes, nurses and physicians notes, and temperature charts.

(4) The ICP shall use follow-up surveillance methods to detect SSIs for procedures defined in section (2)(a) of this rule using at least one of the following:

(a) Direct examination of patients' wounds during follow-up visits to either surgery clinics or physicians' offices;

(b) Review of medical records, subsequent hospitalization records, or surgery clinic records;

(c) Surgeon surveys by mail or telephone;

(d) Patient surveys by mail or telephone; or

(e) Other facility surveys by mail or telephone.

(5) Others employed by the facility may be trained to screen data sources for these infections, but the ICP must determine that the infection meets the criteria established by these rules.

(6) The HAI reporting system for HAI outcome measures shall be NHSN. Each Oregon hospital shall comply with processes and methods prescribed by CDC for NHSN data submission. This includes but is not limited to definitions, data collection, data reporting, and administrative and training requirements. Each Oregon hospital shall:

(a) Join the Oregon HAI group in NHSN.

(b) Authorize disclosure of NHSN data to the Office as necessary for compliance of these rules including but not limited to summary data and denominator data for all SSIs, the annual hospital survey and data analysis components for all SSIs, and summary data and denominator data for all medical ICUs, surgical ICUs, and combined medical/surgical ICUs.

(c) Report its data for outcome measures to NHSN no later than 30 days after the end of the collection month. The NHSN field "Discharge Date" is mandatory for all outcome measures.

(7) Each hospital shall report on a quarterly basis according to 409-023-0010(1) the following HAI process measures:

(a) SCIP-Inf-1;

(b) SCIP-Inf-2;

(c) SCIP-Inf-3;

(d) SCIP-Inf-4;

(e) SCIP-Inf-6; and

(f) SCIP-Inf-10.

(8) The reporting system for HAI process measures shall be the RHQ-DAPU program as configured on July 1, 2008. Each Oregon hospital shall:

(a) Comply with reporting processes and methods prescribed by CMS for the RHQDAPU program. This includes but is not limited to definitions, data collection, data reporting, and administrative and training requirements; and

(b) Report data quarterly for HAI process measures. Data must be submitted to and successfully accepted into the QIO clinical warehouse no later than 11:59 p.m. central time, on the 15th calendar day, four months after the end of the quarter.

(9) For NICUs, the HAI reporting system for outcome measures shall be VON. Each Oregon hospital with a NICU shall comply with processes

and methods prescribed by VON for the VLBW database including but not limited to definitions, data collection, data submission, and administrative and training requirements. Each Oregon hospital shall:

(a) Authorize disclosure of VON data to the Office as necessary for compliance with these rules, including but not limited to facility identifiers.

(b) Submit NICU data to VON according to the quarterly data submission deadlines established by VON in its annual publication "Member Instructions for Submitting Electronic Data" (or its successor).

(10) Each hospital shall complete an annual survey, as defined by the Office, of influenza vaccination of staff and submit the completed survey to the Office. The survey shall include but not be limited to questions regarding influenza vaccine coverage of facility staff:

(a) Number of staff with a documented influenza vaccination during the previous influenza season.

(b) Number of staff with a documented medical contraindication to influenza vaccination during the previous influenza season.

(c) Number of staff with a documented refusal of influenza vaccination during the previous influenza season.

(d) Facility assessment of influenza vaccine coverage of facility staff during the previous influenza season and plans to improve vaccine coverage of facility staff during the upcoming influenza season.

Stat. Auth.: ORS 442.838 & 442.420

Stats. Implemented: ORS 442.838 & 442.405

Hist.: OHP 1-2008, f. & cert. ef. 7-1-08; OHP 1-2009, f. & cert. ef. 7-1-09; OHP 4-2010, f. 6-30-10, cert. ef. 7-1-10

Oregon Board of Dentistry Chapter 818

Rule Caption: Adopt/amends/ repeals rules: Anesthesia, Limited Access Permit, Specialty Advertising, Continuing Education, Application to Practice as a Specialist.

Adm. Order No.: OBD 1-2010

Filed with Sec. of State: 6-22-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 5-1-2010

Rules Adopted: 818-026-0065

Rules Amended: 818-001-0087, 818-015-0007, 818-021-0017, 818-021-0070, 818-026-0000, 818-026-0010, 818-026-0020, 818-026-0030, 818-026-0035, 818-026-0040, 818-026-0050, 818-026-0055, 818-026-0060, 818-026-0070, 818-026-0080, 818-026-0110, 818-026-0120, 818-026-0130, 818-035-0065, 818-042-0040

Rules Repealed: 818-026-0100, 818-035-0075

Subject: OAR 818-026-0065 Deep Sedation, is adopted to reflect changes in the rules and regulations governing the administration of anesthesia based on new guidelines recommended by the American Dental Association.

OAR 818-001-0087 Fees, is amended to raise licensing fees and to change the classification names for Anesthesia Permits.

OAR 818-015-0007 Specialty Advertising, is amended to correct the name of a dental specialty.

OAR 818-021-0017 Application to Practice as a Specialist, is amended to clarify who may serve as the Chief Examiner for specialty examinations.

OAR 818-021-0070 Continuing Education – Dental Hygienists, is amended to reflect the changes made as a result of HB 3204, Oregon Law Chapter 582 (2009 Laws).

OAR 818-026-0000 Purpose; OAR 818-026-0010 Definitions; OAR 818-026-0020 Presumption of Degree of Central Nervous System Depression; OAR 818-026-0030 Requirement for Anesthesia Permit, Standards and Qualifications of an Anesthesia Monitor; OAR 818-026-0035 Classes of Anesthesia Permit; OAR 818-026-0040 Qualifications, Standards Applicable, and Continuing Education Requirements for Anesthesia Permits; Class 1 Permit, OAR 818-026-0050 Class 2 Permit; OAR 818-026-0055 Dental Hygiene and Dental Assistant Procedures Performed under Conscious Sedation; OAR 818-026-0060 Class 3 Permit; OAR 818-026-0070 Class 4 Permit; OAR 818-026-0080 Standards Applicable When a Dentist Performs Dental Procedures and a Qualified Provider Induces Anesthesia; OAR 818-026-0110 Office Evaluations; OAR 818-026-0120 Reporting of Death, Serious Complications or Injury; and OAR 818-026-0130 Anesthesia Committee, are amended to reflect changes in the

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rules and regulations governing the administration of anesthesia based on new guidelines recommended by the American Dental Association.

OAR 818-035-0065 Limited Access Permit, is amended to reflect the changes made as a result of HB 3204, Oregon Law Chapter 582 (2009 Laws).

OAR 818-042-0040 Prohibited Acts, is amended to include an additional Expanded Function Dental Assistant duty and a new prohibited act for Dental Assistants.

OAR 818-026-0100 Effective Date, is repealed as it is no longer applicable.

OAR 818-035-0075 Initial Issuance of Permit – Fee, is repealed to eliminate the prorating of application fees.

Rules Coordinator: Sharon Ingram—(971) 673-3200

818-001-0087

Fees

(1) The Board adopts the following fees:

(a) Biennial License Fees:

(A) Dental — \$280;

(B) Dental — retired — \$0;

(C) Dental Faculty — \$260;

(D) Volunteer Dentist — \$0;

(E) Dental Hygiene — \$120;

(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;

(I) Instructor Permits — \$40;

(J) Dental Hygiene, Limited Access Permit — \$50;

(K) Dental Hygiene Restorative Functions Endorsement — \$50;

(L) Restorative Functions Dental Assistant — \$50;

(M) Anesthesia Dental Assistant — \$50.

(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) \$750 at the time of application; and

(ii) If only one candidate applies for the exam, an additional \$1,250 due ten days prior to the scheduled exam date;

(iii) If two candidates apply for the exam, an additional \$250 (per candidate) due ten days prior to the scheduled exam date;

(iv) If three or more candidates apply for the exam, no additional fee will be required.

(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

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 293.445, 679.060, 679.120, 680.050, 680.200, 680.205

Hist.: DE 6-1985(Temp), f. & ef. 9-20-85; DE 3-1986, f. & ef. 3-31-86; DE 1-1987, f. & ef. 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. e. 7-1-09 thru 11-1-09; OBD 2-2009, f. & cert. ef. 10-21-09, cert. ef. 11-1-09; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10

818-015-0007

Specialty Advertising

(1) The Board recognizes the following specialties:

(a) Endodontics;

(b) Oral and Maxillofacial Surgery;

(c) Oral and Maxillofacial Radiology;

(d) Oral and Maxillofacial Pathology;

(e) Orthodontics and Dentofacial Orthopedics;

(f) Pediatric Dentistry;

(g) Periodontics;

(h) Prosthodontics; and

(i) Dental Public Health.

(2) A dentist may only advertise as a specialist or as specializing in an area of dentistry which is recognized by the Board and in which the dentist is licensed or certified by the Board.

(3) A dentist whose license is not limited to the practice of a specialty under OAR 818-021-0017 may advertise that the dentist performs or limits practice to specialty services even if the dentist is not a specialist in the advertised area of practice so long as the dentist clearly discloses that the dentist is a general dentist or a specialist in a different specialty. For example, the following disclosures would be in compliance with this rule for dentists except those licensed pursuant to 818-021-0017: "Jane Doe, DDS, General Dentist, practice limited to pediatric dentistry." "John Doe, DMD, Endodontist, practice includes prosthodontics."

(4) A hygienist may not advertise as a specialist in any area of dentistry or dental hygiene.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.140(2)(e)

Hist.: DE 1-1988, f. 12-28-88, cert. ef. 2-1-89; DE1-1989, f. 1-27-89, cert. ef. 2-1-89; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 3-1997, f. & cert. ef. 8-27-97; OBD 5-2001, f. & cert. ef. 1-8-01; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06; OBD 1-2008, f. 11-10-08, cert. ef. 12-1-08; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10

818-021-0017

Application to Practice as a Specialist

(1) A dentist who wishes to practice as a specialist in Oregon, who does not have a current Oregon license, in addition to meeting the requirements set forth in ORS 679.060 and 679.065, shall submit to the Board satisfactory evidence of:

(a) Having graduated from a school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association and active licensure as a general dentist in another state. Licensure as a general dentist must have been obtained as a result of the passage of any clinical Board examination administered by any state or regional testing agency;

(b) Certification of having passed the dental examination administered by the Joint Commission on National Dental Examinations or Canadian National Dental Examining Board Examination; and

(c) Proof of satisfactory completion of a post-graduate specialty program accredited by the Commission on Dental Accreditation of the American Dental Association.

(2) A dentist who graduated from a dental school located outside the United States or Canada who wishes to practice as a specialist in Oregon, who does not have a current Oregon license, in addition to meeting the requirements set forth in ORS 679.060 and 679.065, shall submit to the Board satisfactory evidence of:

(a) Completion of a post-graduate specialty program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, proficiency in the English language, and evidence of active licensure as a general dentist in another state obtained as a result of the passage of any clinical Board examination administered by any state or regional testing agency; or

(b) Completion of a post-graduate specialty program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, proficiency in the English language and certification of having successfully passed the clinical examination administered by any state or regional testing agency within the five years immediately preceding application; and

(c) Certification of having passed the dental examination administered by the Joint Commission on National Dental Examinations or Canadian National Dental Examining Board Examination; and

(3) An applicant who meets the above requirements shall be issued a specialty license upon:

(a) Passing a specialty examination administered by Board appointed, designated grading Examiners, who are specialists in the same specialty as the applicant and a non-grading Chief Examiner who is an Oregon licensed dentist.

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(b) Passing the Board's jurisprudence examination.

(4) Any applicant who does not pass the first examination for a specialty license may apply for a second and third regularly scheduled specialty examination. The applicable fee and application for the reexamination shall be submitted to the Board at least 45 days before the scheduled examination. If the applicant fails to pass the third examination for the practice of a recognized specialty, the applicant will not be permitted to retake the particular specialty examination until he/she has attended and successfully passed a remedial program prescribed by a dental school and approved by the Board.

(5) Licenses issued under this rule shall be limited to the practice of the specialty only.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.140, 679.060, 679.065, 679.070, 679.080, 679.090

Hist.: DE 4-1997, f. & cert. ef. 12-31-97; OBD 2-1999(Temp), f. 3-10-99, cert. ef. 3-15-99 thru 9-10-99; OBD 5-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 11-2001, f. & cert. ef. 1-8-01; OBD 3-2005, f. 10-26-05, cert. ef. 11-1-05; OBD 1-2008, f. 11-10-08, cert. ef. 12-1-08; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10

818-021-0070

Continuing Education — Dental Hygienists

(1) Each dental hygienist must complete 24 hours of continuing education every two years. A Limited Access 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; 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.

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. 10-21-09, cert. ef. 11-1-09; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10

818-026-0000

Purpose

(1) These rules apply to the administration of substances that produce general anesthesia, deep sedation, moderate sedation, minimal sedation or nitrous oxide sedation in patients being treated by licensees in facilities not accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO/TJC), the Accreditation Association for Ambulatory Health Care (AAAHC), the American Association for Accreditation of Ambulatory Surgical Facilities (AAAASF), the American Osteopathic Association (AOA) or their successor organizations. These regulations are not intended to prohibit training programs for licensees or to prevent persons from taking necessary action in case of an emergency.

(2) Nothing in this Division relieves a licensee from the standards imposed by ORS 679.140(1)

Stat. Auth.: ORS 679 & 680

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; 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

818-026-0010

Definitions

As used in these rules:

(1) "Anesthesia Monitor" means a person trained in monitoring patients under sedation and capable of assisting with procedures, problems and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(2) "Anxiolysis" means the diminution or elimination of anxiety.

(3) "General Anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent 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.

(4) "Deep Sedation" means 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 in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(5) "Moderate Sedation" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(6) "Minimal Sedation" means 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.

(7) "Nitrous Oxide Sedation" means 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.

(8) "Maximum recommended dose" (MRD) means maximum Food and Drug Administration-recommended dose of a drug, as printed in Food and Drug Administration-Approved labeling for unmonitored dose.

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; 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

818-026-0020

Presumption of Degree of Central Nervous System Depression

(1) In any hearing where a question exists as to the degree of central nervous system depression a licensee has induced (i.e., general anesthesia, deep sedation, moderate sedation, minimal sedation or nitrous oxide sedation), the Board may base its findings on, among other things, the types, dosages and routes of administration of drugs administered to the patient and what result can reasonably be expected from those drugs in those dosages and routes administered in a patient of that physical and psychological status.

(2) The following drugs are conclusively presumed to produce general anesthesia and may only be used by a licensee holding a General Anesthesia Permit:

(a) Ultra short acting barbiturates including, but not limited to, sodium methohexital, thiopental, thiamylal;

(b) Alkylphenols — propofol (Diprivan) including precursors or derivatives;

(c) Neuroleptic agents;

(d) Dissociative agents — ketamine;

(e) Etomidate;

(f) Rapidly acting steroid preparations; and

(g) Volatile inhalational agents.

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(3) No permit holder shall have more than one person under any form of sedation or general anesthesia at the same time exclusive of recovery.

Stat. Auth.: ORS 679 & 680
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; 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

818-026-0030

Requirement for Anesthesia Permit, Standards and Qualifications of an Anesthesia Monitor

(1) A permit holder who administers sedation shall assure that drugs, drug dosages, and/or techniques used to produce sedation shall carry a margin of safety wide enough to prevent unintended deeper levels of sedation.

(2) No dentist or dental hygienist shall induce central nervous system sedation or general anesthesia without first having obtained a permit under these rules for the level of anesthesia being induced.

(3) No dentist or dental hygienist may be granted a permit to administer sedation or general anesthesia under these rules without documentation of current training/education and/or competency in the permit category for which the licensee is applying. The applicant may demonstrate current training/education or competency by any one of the following:

(a) Current training/education or competency shall be limited to completion of initial training/education in the permit category for which the applicant is applying and shall be completed no more than two years immediately prior to application for sedation or general anesthesia permit; or

(b) Completion of initial training/education no greater than five years immediately prior to application for sedation or general anesthesia permit. Current competency must be documented by completion of all continuing education that would have been required for that anesthesia/permit category during that five year period following initial training; or

(c) Completion of initial training/education no greater than five years immediately prior to application for sedation or general anesthesia permit. Current competency must be documented by completion of a comprehensive review course approved by the Board in the permit category to which the applicant is applying and must consist of at least one-half (50%) of the hours required by rule for Nitrous Oxide, Minimal Sedation, Moderate Sedation and General Anesthesia Permits. Deep Sedation and General Anesthesia Permits will require at least 120 hours of general anesthesia training.

(d) An applicant for sedation or general anesthesia permit whose completion of initial training/education is greater than five years immediately prior to application, may be granted a sedation or general anesthesia permit by submitting documentation of the requested permit level from another state or jurisdiction where the applicant is also licensed to practice dentistry or dental hygiene, and provides documentation of the completion of at least 25 cases in the requested level of sedation or general anesthesia in the 12 months immediately preceding application; or

(e) Demonstration of current competency to the satisfaction of the Board that the applicant possesses adequate sedation or general anesthesia skill to safely deliver sedation or general anesthesia services to the public.

(4) Persons serving as anesthesia monitors in a dental office shall maintain current certification in Health Care Provider Basic Life Support (BLS)/Cardio Pulmonary Resuscitation (CPR) training, or its equivalent, shall be trained in monitoring patient vital signs, and be competent in the use of monitoring and emergency equipment appropriate for the level of sedation utilized. (The term "competent" as used in these rules means displaying special skill or knowledge derived from training and experience.)

(5) No dentist or dental hygienist holding an anesthesia permit shall administer anesthesia unless they hold a current Health Care Provider BLS/CPR level certificate or its equivalent, or holds a current Advanced Cardiac Life Support (ACLS) Certificate or Pediatric Advanced Life Support (PALS) Certificate, whichever is appropriate for the patient being sedated.

(6) When a dentist utilizes a single dose oral agent to achieve anxiolysis only, no anesthesia permit is required.

(7) The applicant for an anesthesia permit must pay the appropriate permit fee, submit a completed Board-approved application and consent to an office evaluation.

(8) Permits shall be issued to coincide with the applicant's licensing period.

Stat. Auth.: ORS 679 & 680
Stats. Implemented: ORS 679.250
Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; 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 3-2005, f. 10-26-05, cert. ef. 11-1-05; OBD 1-2008, f. 11-10-08, cert. ef. 12-1-08; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10

818-026-0035

Classes of Anesthesia Permit

The Board shall issue the following classes of permits:

(1) A Nitrous Oxide Permit authorizes a dental hygienist or a dentist to induce nitrous oxide sedation.

(2) A Minimal Sedation Permit authorizes a dentist to induce minimal sedation and nitrous oxide sedation.

(3) A Moderate Sedation Permit authorizes a dentist to induce moderate sedation, minimal sedation and nitrous oxide sedation.

(4) A Deep Sedation Permit authorizes a dentist to induce deep sedation, moderate sedation, minimal sedation, and nitrous oxide sedation. The Board shall issue a Deep Sedation Permit to a licensee who holds a Class 3 Permit on or before July 1, 2010.

Stat. Auth.: ORS 679 & 680
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 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

818-026-0040

Qualifications, Standards Applicable, and Continuing Education Requirements for Anesthesia Permits: Nitrous Oxide Permit

Nitrous Oxide Sedation.

(1) The Board shall issue a Nitrous Oxide Permit to an applicant who:

(a) Is either a licensed dentist or licensed hygienist in the State of Oregon;

(b) Holds a valid and current Health Care Provider BLS/CPR level certificate, or its equivalent; and

(c) Has completed a training course of at least 14 hours of instruction in the use of nitrous oxide from a dental school or dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association, or as a postgraduate.

(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 delivery of appropriate care in an emergency situation;

(b) An operating table or chair which permits the patient to be positioned so that the patient's airway can be maintained, 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 masks 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; and

(g) Sphygmomanometer and stethoscope and/or automatic blood pressure cuff.

(3) Before inducing nitrous oxide sedation, a permit holder shall:

(a) Evaluate the patient;

(b) Give instruction 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 nitrous oxide sedation; and

(d) Obtain 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) A patient under nitrous oxide sedation shall be visually monitored by the permit holder or by an anesthesia monitor at all times. The patient shall be monitored as to response to verbal stimulation, oral mucosal color and preoperative and postoperative vital signs.

(5) The permit holder or anesthesia monitor shall record the patient's condition. The record must include documentation of all medications administered with dosages, time intervals and route of administration.

(6) The person administering the nitrous oxide sedation may leave the immediate area after initiating the administration of nitrous oxide sedation only if a qualified anesthesia monitor is continuously observing the patient.

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(7) The permit holder shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

- (a) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;
 - (b) The patient can talk and respond coherently to verbal questioning;
 - (c) The patient can sit up unaided or without assistance;
 - (d) The patient can ambulate with minimal assistance; and
 - (e) The patient does not have nausea, vomiting or dizziness.
- (8) The permit holder shall make a discharge entry in the patient's record indicating the patient's condition upon discharge.

(9) Permit renewal. In order to renew a Nitrous Oxide Permit, the permit holder must provide proof of having a current Health Care Provider BLS/CPR level certificate, or its equivalent. In addition, Nitrous Oxide Permit holders must also complete four (4) hours of continuing education in one or more of the following areas every two years: sedation, nitrous oxide, 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 and 818-021-0070.

Stat. Auth.: ORS 679 & 680
Stats. Implemented: ORS 679.250(7) & (10)
Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; 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

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 chairside assistant.

(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

818-026-0055

Dental Hygiene and Dental Assistant Procedures Performed Under Minimal Sedation

(1) Under indirect supervision, dental hygiene procedures may be performed for a patient who is under minimal sedation under the following conditions:

(a) A dentist holding a Minimal, Moderate, Deep Sedation or General Anesthesia Permit administers the sedative agents;

(b) The dentist permit holder performs the appropriate pre- and postoperative evaluation and discharges the patient in accordance with 818-026-0050(7) and (8); and

(c) An anesthesia monitor, in addition to the dental hygienist performing the authorized procedures, is present with the patient at all times.

(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 minimal sedation under the following conditions:

(a) A dentist holding the Minimal, Moderate, Deep Sedation or General Anesthesia Permit administers the sedative agents;

(b) The dentist permit holder, or an anesthesia monitor, monitors the patient; and

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(c) The dentist 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

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) Holds a current Advanced Cardiac Life Support (ACLS) 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 a comprehensive training program in enteral and/or parenteral sedation that satisfies the requirements described in Part III of the ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students (2007) at the time training was commenced.

(1) 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.

(2) 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 or 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. 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 introduce additional anesthetic agents to 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 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 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

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:

(a) Is a licensed dentist in Oregon;

(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;

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(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 or capnograph, pulse oximeter, 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 or conscious 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. 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) 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 introduce additional anesthetic agents to an infusion line under the direct visual supervision of a dentist.

(12) Permit renewal. In order to renew a Moderate Sedation/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

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 or capnograph, pulse oximeter, 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 Provider BLS/CPR level certificate, or its equivalent, shall be present in the operatory in addition to the dentist performing the dental procedures.

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(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, oxygen saturation levels and respiration. 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) 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

818-026-0080

Standards Applicable When a Dentist Performs Dental Procedures and a Qualified Provider Induces Anesthesia

(1) A dentist who does not hold an anesthesia permit may perform dental procedures on a patient who receives anesthesia induced by a physician anesthesiologist licensed by the Oregon Board of Medical Examiners, another Oregon licensed dentist holding an appropriate anesthesia permit, or a Certified Registered Nurse Anesthetist (CRNA) licensed by the Oregon Board of Nursing.

(2) A dentist who does not hold a Nitrous Oxide Permit for nitrous oxide sedation may perform dental procedures on a patient who receives

nitrous oxide induced by an Oregon licensed dental hygienist holding a Nitrous Oxide Permit.

(3) A dentist who performs dental procedures on a patient who receives anesthesia induced by a physician anesthesiologist, another dentist holding an anesthesia permit, a CRNA, or a dental hygienist who induces nitrous oxide sedation, shall hold a current and valid Health Care Provider BLS/CPR level certificate, or equivalent, and have the same personnel, facilities, equipment and drugs available during the procedure and during recovery as required of a dentist who has a permit for the level of anesthesia being provided.

(4) The qualified anesthesia provider who induces anesthesia shall monitor the patient's condition until the patient is discharged and record the patient's condition at discharge in the patient's dental record as required by the rules applicable to the level of anesthesia being induced. The anesthesia record shall be maintained in the patient's dental record and is the responsibility of the dentist who is performing the dental procedures.

(5) A dentist who intends to use the services of a qualified anesthesia provider as described in section 1 above, shall notify the Board in writing of his/her.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & (10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; 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 1-2006, f. 3-17-06, cert. ef. 4-1-06; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10

818-026-0110

Office Evaluations

(1) By obtaining an anesthesia permit or by using the services of a physician anesthesiologist, CRNA, an Oregon licensed dental hygienist or another dentist to administer anesthesia, a licensee consents to in-office evaluations by the Oregon Board of Dentistry, to assess competence in central nervous system anesthesia and to determine compliance with rules of the Board.

(2) The in-office evaluation shall include:

(a) Observation of one or more cases of anesthesia to determine the appropriateness of technique and adequacy of patient evaluation and care;

(b) Inspection of facilities, equipment, drugs and records; and

(c) Confirmation that personnel are adequately trained, hold current Health Care Provider Basic Life Support level certification, or its equivalent, and are competent to respond to reasonable emergencies that may occur during the administration of anesthesia or during the recovery period.

(3) The evaluation shall be performed by a team appointed by the Board and shall include:

(a) A permit holder who has the same type of license as the licensee to be evaluated and who holds a current anesthesia permit in the same class or in a higher class than that held by the licensee being evaluated,

(b) A member of the Board's Anesthesia Committee; and

(c) Any licensed dentist, deemed appropriate by the Board President, may serve as team leader and shall be responsible for organizing and conducting the evaluation and reporting to the Board.

(4) The Board shall give written notice of its intent to conduct an office evaluation to the licensee to be evaluated. Licensee shall cooperate with the evaluation team leader in scheduling the evaluation which shall be held no sooner than 30 days after the date of the notice or later than 90 days after the date of the notice.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250(7) & (10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; 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

818-026-0120

Reporting of Death, Serious Complications or Injury

If a death, any serious complication or any injury occurs which may have resulted from the administration of any central nervous system anesthesia or sedation, the licensee performing the dental procedure must submit a written detailed report to the Board within five days of the incident along with the patient's original complete dental records. If the anesthetic agent was administered by a person other than the person performing the dental procedure, that person must also submit a detailed written report. The detailed report(s) must include:

(1) Name, age and address of patient;

(2) Name of the licensee and other persons present during the incident;

(3) Address where the incident took place;

(4) Type of anesthesia and dosages of drugs administered to the patient;

(5) A narrative description of the incident including approximate times and evolution of symptoms; and

ADMINISTRATIVE RULES

(6) The anesthesia record and the signed informed consent form for the anesthesia when required.

Stat. Auth.: ORS 679 & 680
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; 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

818-026-0130

Anesthesia Committee

(1) The Board hereby creates a committee to be known as the Anesthesia Committee. The chairperson shall be a dentist who is a member of the Board. All other members shall hold a Moderate, Deep Sedation or General Anesthesia Sedation Permit. At least one member, other than the chairperson, shall be a practicing specialist who holds a General Anesthesia Permit. Members serve at the pleasure of the Board and shall be appointed by the President of the Board. The Board President shall insure that the committee includes representatives of dental specialty groups including general dentists.

(2) The Anesthesia Committee shall, upon request of the Board, advise the Board on policies and procedures related to the regulation of general anesthesia, deep sedation, moderate sedation, minimal

Stat. Auth.: ORS 679
Stats. Implemented: ORS 679.280
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 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

818-035-0065

Limited Access Permit

The Board shall issue a Limited Access Permit (LAP) to a Dental Hygienist who holds an unrestricted Oregon license, and completes an application approved by the Board, pays the permit fee, and

(1) Certifies on the application that the dental hygienist has completed at least 2,500 hours of supervised dental hygiene clinical practice, or clinical teaching hours, and also completes 40 hours of courses in a formal, post-secondary educational program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency and approved by the Board, relating to the patients in categories under ORS 680.205 and shall include the following course content: General Medicine/Physical Diagnosis; Pharmacology; Oral Pathology; Patient Management; Psychology; and Jurisprudence relating to unsupervised clinical practice with limited access patients; or

(2) Certifies on the application that the dental hygienist has completed a course of study that includes at least 500 hours of dental hygiene practice on patients described in ORS 680.205; and

(3) Provides the Board with a copy of the applicant's current professional liability policy or declaration page which will include, the policy number and expiration date of the policy.

(4) Notwithstanding OAR 818-035-0025(1), prior to performing any dental hygiene services a Limited Access Permit Dental Hygienist shall examine the patient, gather data, interpret the data to determine the patient's dental hygiene treatment needs and formulate a patient care plan.

Stat. Auth.: ORS 680
Stats. Implemented: ORS 680.200
Hist.: OBD 1-1998, f. & cert. ef. 6-8-98; OBD 3-2001, f. & cert. ef. 1-8-01; OBD 3-2007, f. & cert. ef. 11-30-07; OBD 1-2010, f. 6-22-10, cert. ef. 7-1-10

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 or take any action related to the movement 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 or drugs administered pursuant to OAR 818-026-0060(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 Department of Human Services, Oregon Public Health Division, and Radiation Protection Services (RPS), 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) 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 3-20BD 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

Oregon Board of Naturopathic Medicine Chapter 850

Rule Caption: To clarify what information naturopathic physicians must self-report to the board.

Adm. Order No.: OBNM 4-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10

Notice Publication Date: 5-1-2010

Rules Amended: 850-050-0120, 850-050-0130

Subject: To clarify what information naturopathic physicians must report to the board.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-050-0120

Illegal Practice; Duty to Self-Report

(1) No person other than a licensee complying with the provisions of ORS Chapter 685 shall:

(a) Advertise, hold out to the public or represent in any manner that the person is authorized to practice naturopathy or naturopathic medicine in Oregon, or

(b) Use the terms "naturopathic practitioner," "naturopathic healer," "naturopathic doctor," "naturopathic consultant" or any other terms that convey intent to practice naturopathy or naturopathic medicine.

(2) Any applicant for examination shall be prohibited from and prosecuted for any practice of naturopathy or naturopathic medicine while awaiting examination.

(3) Any person convicted of practicing illegally in Oregon or any person who, without a license, makes a diagnosis shall not be admitted to examination by the Board at any time.

(4) It shall be the duty of all Board licensees, in the interests of both the public and the profession, to inform the Board, in writing, of anyone practicing naturopathy or naturopathic medicine in Oregon without a license or otherwise in violations of the law.

(5) For the purpose of this rule, naturopathic treatment shall be considered as practicing naturopathy or naturopathic medicine within the meaning of ORS 685.010(5), unless under the direct supervision of a licensee of the Board.

ADMINISTRATIVE RULES

(6) Each Board licensee must self-report to the Board in writing as soon as possible, but no later than 30 days after official action taken against the licensee, of any of the following:

(a) Any arrest, citation or conviction of the licensee for driving under the influence of intoxicants or reckless driving that is related to the use of an intoxicant;

(b) Any arrest or conviction of the licensee for a felony violation or criminal conduct;

(c) Any action brought against the licensee by a health regulatory agency; and

(d) Any action brought against the licensee by a patient, former patient, or health care facility, based upon allegations or findings of medical incompetence, malpractice, unprofessional conduct or licensee impairment.

Stat. Auth.: ORS 685

Stats. Implemented: ORS 685.220 & 685.110

Hist.: NE 2, f. 6-7-59; BNE 4-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0120, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 5-2008, f. & cert. ef. 6-11-08; OBNM 4-2010, f. & cert. ef. 6-30-10

850-050-0130

Change of Name and Address

Each Board licensee must notify the Board in writing within 30 days of any change of the licensee's name, residence address, practice location, or mailing address.

Stat. Auth.: ORS 685

Stats. Implemented: ORS 685.100, 685.110

Hist.: NE 2, f. 6-7-59; BNE 1-2004, f. & cert. ef. 2-11-04; Renumbered from 850-010-0130, BNE 8-2005, f. & cert. ef. 10-27-05; OBNM 4-2010, f. & cert. ef. 6-30-10

Rule Caption: To clarify specific authority of naturopathic physicians to prescribe for doctors and pharmacists.

Adm. Order No.: OBNM 5-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10

Notice Publication Date: 5-1-2010

Rules Amended: 850-060-0226

Subject: Clarifies language of authority of licensees to prescribe for doctors and pharmacists.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-060-0226

Formulary Compendium Classifications

The Formulary Council has approved the following pharmacologic-therapeutic classifications based on the 2009 American Hospital Formulary Service (AHFS), in addition to drugs previously approved by the Formulary Council and listed in 850-060-0225. This listing does not supersede the education and training requirement established in 850-060-0212 for administration of IV agents. The Formulary Council may consider new agents, substances and pharmacologic-therapeutic classifications for addition to this list.

- (1) Antihistamine Drugs
 - (a) First Generation Antihistamine Drugs
 - (A) Ethanolamine Derivatives
 - (B) Ethylenediamine Derivatives
 - (C) Phenothiazine Derivatives
 - (D) Piperazine Derivatives
 - (E) Propylamine Derivatives
 - (F) Miscellaneous Derivatives
- (b) Second Generation Antihistamines
- (2) Anti-Infective Agents
 - (a) Anthelmintics
 - (b) Antibacterials
 - (A) Aminoglycosides
 - (B) Cephalosporins
 - (i) First Generation Cephalosporins
 - (ii) Second Generation Cephalosporins
 - (iii) Third Generation Cephalosporins
 - (iv) Fourth Generation Cephalosporins
 - (C) Miscellaneous β -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
- (i) 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) Megestrol
 - (e) Mercaptopurine
 - (f) Methotrexate
 - (g) Tamoxifen
 - (h) Tretinoin
- (4) Autonomic Drugs
 - (a) Parasympathomimetic (Cholinergic) Agents
 - (b) Anticholinergic Agents — Antimuscarinics/ Antispasmodics
 - (c) Sympathomimetic (Adrenergic) Agents
 - (A) α -Adrenergic Agonists
 - (B) β -Adrenergic Agonists
 - (i) Non-selective β -Adrenergic Agonists
 - (ii) Selective β_1 -Adrenergic Agonists
 - (iii) Selective β_2 -Adrenergic Agonists
 - (C) α -And β -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

ADMINISTRATIVE RULES

- (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 — Anticoagulants
- (A) Coumarin Derivatives
- (B) Direct Thrombin Inhibitors
- (C) Heparins
- (D) Anticoagulants, Miscellaneous
- (c) Platelet-reducing Agents
- (d) Platelet-aggregation Inhibitors
- (e) Thrombolytic Agents
- (f) Hematopoietic Agents
- (g) Hemorrhologic Agents
- (h) 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 α -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) α -Adrenergic Blocking Agents
 - (g) β -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 — Antidepressants
 - (A) Monoamine Oxidase Inhibitors
 - (B) Selective Serotonin- and Norepinephrine-reuptake Inhibitors
 - (C) Selective Serotonin- Reuptake Inhibitors
 - (D) Serotonin Modulators
 - (E) Tricyclics and Other Norepinephrine-reuptake Inhibitors
 - (F) Antidepressants, Miscellaneous
 - (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) Anxiolytics, Sedatives, and Hypnotics; Miscellaneous
 - (g) Antimanic Agents
 - (h) Antimigraine Agents — Selective Serotonin Agonists
 - (i) Antiparkinsonian Agents
 - (A) Adamantanes
 - (B) Anticholinergic Agents
 - (C) Catechol-O-Methyltransferase (COMT) Inhibitors
 - (D) Dopamine Precursors
 - (E) Dopamine Receptor Agonists
 - (i) Ergot-derivative Dopamine Receptor Agonists
 - (ii) Non-ergot-derivative Dopamine Receptor Agonists
 - (F) Monoamine Oxidase B Inhibitors
 - (j) Central Nervous System Agents, Miscellaneous
 - (9) Contraceptives (foams, devices)
 - (10) Diagnostic Agents
 - (11) Disinfectants (for Agents used on objects other than skin)
 - (12) Electrolytic, Caloric, and Water Balance
 - (a) Acidifying Agents
 - (b) Alkalinizing Agents
 - (c) Ammonia Detoxicants
 - (d) Replacements Preparations
 - (e) Ion-Removing Agents
 - (A) Calcium-removing Agents
 - (B) Potassium-removing Agents
 - (C) Phosphate-removing Agents
 - (D) Other Ion-removing Agents
 - (f) Caloric Agents
 - (g) Diuretics
 - (A) Loop Diuretics
 - (B) Osmotic Diuretics
 - (C) Potassium-sparing Diuretics
 - (D) Thiazide Diuretics
 - (E) Thiazide-like Diuretics
 - (F) Diuretics, Miscellaneous
 - (h) Irrigation Solutions
 - (i) Uricosuric Agents
 - (13) Enzymes
 - (14) Respiratory Tract Agents
 - (a) Antihistamines
 - (b) Antitussives
 - (c) Anti-inflammatory Agents
 - (A) Leukotriene Modifiers
 - (B) Mast-cell Stabilizers
 - (d) Expectorants
 - (e) Pulmonary Surfactants
 - (f) Respiratory Agents, Miscellaneous
 - (15) Eye, Ear, Nose, and Throat (EENT) Preparations
 - (a) Antiallergic Agents
 - (b) Anti-infectives
 - (A) Antibacterials
 - (B) Antifungals
 - (C) Antivirals
 - (D) Anti-infectives, Miscellaneous
 - (c) Anti-inflammatory Agents
 - (A) Corticosteroids
 - (B) Nonsteroidal Anti-inflammatory Agents
 - (C) Anti-inflammatory Agents, Miscellaneous
 - (d) Local Anesthetics
 - (e) Mydriatics
 - (f) Mouthwashes and Gargles
 - (g) Vasoconstrictors
 - (h) Antiglaucoma Agents
 - (A) α -Adrenergic Agonists
 - (B) β -Adrenergic Agonists
 - (C) Carbonic Anhydrase Inhibitors
 - (D) Miotics
 - (E) Prostaglandin Analogs

ADMINISTRATIVE RULES

- (i) EENT Drugs, Miscellaneous
- (16) Gastrointestinal Drugs
 - (a) Antacids and Adsorbents
 - (b) Antidiarrhea Agents
 - (c) Antiflatulents
 - (d) Cathartics and Laxatives
 - (e) Cholelitholytic Agents
 - (f) Emetics
 - (g) Antiemetics
 - (A) Antihistamines
 - (B) 5-HT₃ Receptor Antagonists
 - (C) Antiemetics, Miscellaneous
 - (h) Antiulcer Agents and Acid Suppressants
 - (A) Histamine H₂-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: IAdministration 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-Antagonists
 - (e) Gonadotropins
 - (f) Antidiabetic Agents
 - (A) α -Glucosidase Inhibitors
 - (B) Amylinomimetics
 - (C) Biguanides
 - (D) Dipeptidyl Peptidase (DDP-4) Inhibitors
 - (E) Incretin Mimetics
 - (F) Insulins
 - (G) Meglitinides
 - (H) Sulfonylureas
 - (I) Thiazolidinediones
 - (g) Antihypoglycemic Agents
 - (A) 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
- (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
 - (26) Miscellaneous Therapeutic Agents
 - (a) Alcohol Deterrents limited to the following:
 - (A) Acamprosate;
 - (B) Disulfiram;
 - (C) Naltrexone
 - (b) 5- α Reductase Inhibitors
 - (c) Antidotes
 - (d) Antigout Agents
 - (e) Biologic Response Modifiers, limited to Interferons
 - (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) Lanreotide Acetate;
 - (D) Rilonecept;
 - (E) Sapropterin Dihydrochloride;
 - (F) Tamsulosin Hydrochloride
- Stat. Auth.: ORS 685.125
Stat. 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; OBNNM 5-2010, f. & cert. ef. 6-30-10

Oregon Business Development Department Chapter 123

Rule Caption: These rules revise the Water/Wastewater Financing Program.

Adm. Order No.: OBDD 30-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 123-043-0015, 123-043-0035, 123-043-0041, 123-043-0055, 123-043-0075, 123-043-0085, 123-043-0102, 123-043-0105

Rules Repealed: 123-043-0015(T), 123-043-0035(T), 123-043-0041(T), 123-043-0055(T), 123-043-0075(T), 123-043-0085(T), 123-043-0102(T), 123-043-0105(T)

Subject: These rules are being revised to replace the word "Authority" with "Department" in a few areas. Language has been added to the Application Review and Approval rules regarding funding for technical assistance projects. Language has also been added to the Contract Administration and Disbursement of Funds rules regarding the installation of meters no later than two years after the completion of a drinking water project with existing, active unmetered service connections.

Rules Coordinator: Mindee Sublette — (503) 986-0036

123-043-0015

Eligible Project Costs and Activities

(1) Eligible costs include the reasonable costs for eligible program activities and include:

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(a) Project development costs;
(b) Construction contingencies for a project as approved by the Authority;

(c) Financing costs associated with the department's financing including capitalized interest, issuance and debt service reserve costs, when such costs are incurred in funding a project;

(d) Costs incurred by the municipality prior to the award if such costs are allowable under the Department's adopted policy for reimbursement of pre-award costs; and

(e) At the discretion of the Authority, reasonable, new project management costs but not expenses for current staff that are already included in the municipality's adopted budget.

(2) Eligible project and program activities include the construction, improvement or expansion of the following facilities owned and operated by a municipality:

(a) Domestic drinking water systems including all facilities necessary for source, supply, filtration, treatment, storage, transmission, and metering;

(b) Wastewater systems including all facilities necessary for collecting; conveying, pumping, treating and disposing of sanitary sewage, including correction of infiltration and inflow through replacement of lines, sliplining, or other corrective processes approved by the Authority;

(c) Storm water systems including all facilities necessary for controlling, collecting, conveying, treating and discharging of storm water; and

(d) The acquisition of real property directly related to or necessary for the proposed project.

(e) Project development and the associated engineering, architectural and planning work involved in developing the facilities listed in (1) above, including technical assistance and support activities necessary to the construction of a project as determined by the Authority.

Stat. Auth.: ORS 285B.563

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10

123-043-0035

Criteria and Limitations for Funding — Non-Technical Assistance Projects

(1) The intent of the Legislature was to provide funding to municipalities to assist in complying with the **Safe Drinking Water Act** and the **Clean Water Act**. Therefore, priority will be given to projects necessary to ensure that municipal water and wastewater systems comply with the requirements of:

(a) Drinking water quality standards administered by the Oregon Department of Human Services Public Health Services Drinking Water Program; or

(b) Water quality statutes, rules, orders, or permits administered by DEQ or the Environmental Quality Commission.

(2) If a municipal water or wastewater system has not been issued a notice of non-compliance by the governing regulatory authority, the Authority may determine that a proposed project is eligible for assistance upon a finding that one of the following has been met:

(a) A recent letter has been issued by the appropriate regulatory authority, typically the Department of Human Services Drinking Water Program, DEQ, or its contracted agent, which indicates a high probability that the system owner will soon be notified of non-compliance with either the **Safe Drinking Water Act** or the **Clean Water Act**; or

(b) The Authority deems it reasonable and prudent that an award from the fund will assist in bringing the drinking water, storm water or wastewater system into compliance with the requirements of the **Safe Drinking Water Act**, the **Clean Water Act**, those requirements proposed to take effect within the next two years, or the requirements of other regulatory agencies recognized by the Authority as having responsibility for the protection of water quality and the supply of clean drinking water.

(3) The Authority generally will not fund projects without the conditions of 123-043-0035(2) being met.

(4) The project must be consistent with the acknowledged local comprehensive plan.

(5) The Authority encourages regionalization whenever feasible.

(6) The Authority encourages asset management planning where possible.

(7) The Authority will apply approved prioritization when reviewing project information contained in project notification intake form.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp), f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert.

ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10

123-043-0041

Criteria and Limitations for Funding — Technical Assistance Projects

(1) Awards are available to municipalities with populations of less than 15,000 people for technical assistance. If the project is for a facility plan or study required by a regulatory agency, the municipality is not required to document non-compliance. Other Technical Assistance projects may be considered after consulting with and receiving documentation of project support from the regulatory agency.

(2) Technical assistance grants and loans are subject to the following limitations:

(a) A grant of up to \$20,000 may be awarded for a project.

(b) A loan of up to \$50,000 may be awarded for a project. Interest shall be at 75 percent of the annual interest rate for other loans made in accordance with the requirements of this OAR chapter 123, division 43. The loan term shall not exceed seven years; and

(c) No more than \$600,000 shall be expended from the fund on technical assistance in any biennium. When awarding a grant under this section the Authority will not first consider a municipality's ability to repay a loan.

(d) The application must meet the requirements listed in OAR 123-043-0075(2).

(3) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be pledged in addition to the foregoing.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10

123-043-0055

Loan and Grant Information

(1) The Authority may award financing in a manner that maximizes the use of available resources and maintains the desired credit standards of the fund. The Authority shall determine the amount, type, interest rate and terms of any financing awarded. It may offer an alternate mix or lower amount of assistance than requested. The amount of the award may be the minimum amount that the department determines is necessary to enable the project to proceed, and the Authority may investigate and recommend other sources of funds for all or part of a proposed project. Projects that the Authority determines are not financially feasible will not be funded.

(2) Loans for non-technical assistance projects:

(a) The term of a loan is limited to the usable life of the contracted project, or 25 years from the year of project completion, whichever is less.

(b) Except as provided elsewhere in OAR chapter 123, division 43, the interest rate on a loan is based on market conditions for similar debt and is set at the time of the award.

(c) The interest rate on a bond funded loan is equal to the coupon rates on the state revenue bonds funding the loan. Until the state revenue bonds funding the loan are sold, the municipality will pay interest at a rate established by the Authority on loan funds disbursed to the municipality.

(d) Maximum amount for a loan for a project may be determined by the Authority on the basis of the department's financial analysis of the municipality's capacity for repaying the debt, the availability of moneys in the fund and prudent fund management.

(e) The loan shall be a full faith and credit obligation which is payable from any taxes which the municipality may levy within the limitations of Article XI of the Oregon Constitution and all legally available revenues and other funds of the municipality. A pledge of specific revenues of the municipality may be required by the Authority to be pledged in addition to the foregoing.

(3) Grants for non-technical assistance projects: When making a determination to award a grant, the Authority will apply prudent fiscal management of the fund in order to manage limited funding resources. The Authority shall determine if the project meets the criteria of a grant and make a determination on the amount of the grant based on financial need or other special circumstances. In making its determination, the Authority shall apply the following criteria:

(a) The Authority's financial analysis determines that the municipality's financial resources, including its borrowing capacity, are insufficient to finance the project;

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(b) The projected annual residential utility rate for the system is at least equivalent to a minimum rate as determined by the Authority's policy. The Authority's policy may include such factors as the most recent U.S. Census data on median household income and annual adjustments for inflation since the most recent census;

(c) Only a distressed community is eligible for a grant award; and

(d) Grants may be awarded up to \$750,000 based on the Department's policy, but not more than 50 percent of the financial award from the fund.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10

123-043-0075

Application Review and Approval

(1) For a non-technical assistance project, the Authority must make the following determinations:

(a) The municipality shall document that a registered professional engineer has certified in an engineering report, such as a Master Plan, that the proposed project is feasible, is the most cost effective solution, and adequately serves the applicable land uses in both the short and long term;

(b) The loan is secured by the pledge of utility revenues or other revenues or payments from owners of specially benefited properties, and these revenues or payments are sufficient, when considered with other security, to assure repayment of the loan and the municipality has certified to the Authority that there will be adequate funds available to repay the loans made to the municipality from the fund;

(c) Moneys in the appropriate accounts of the fund are or will be available for the project;

(d) The municipality is willing and able to enter into a contract with the Authority;

(e) The project is consistent with the requirements governing assistance from the fund. If the Authority determines that the municipality or the proposed project does not meet the requirements of this OAR 123-043-0075, the Authority may reject an application or require further documentation from the municipality; and

(f) The project is ready to begin and the municipality has committed in writing that, if awarded the assistance it shall proceed immediately.

(2) To award assistance from the fund for a technical assistance project, the Authority must make the following determinations:

(a) The technical assistance activities must be for a project that is eligible under the criteria listed in 123-043-0041; and

(b) The municipality has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the project.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 1-2003(Temp) f. 2-20-03, cert. ef. 2-24-03 thru 6-30-03; EDD 8-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; EDD 9-2004, f. & cert. ef. 3-22-04; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 14-2008(Temp), f. & cert. ef. 4-9-08 thru 10-5-08; EDD 32-2008, f. 10-2-08, cert. ef. 10-3-08; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10

123-043-0085

Contract Administration and Disbursement of Funds

(1) The Authority shall disburse monies from the fund only after entering into a binding contract with the municipality.

(2) The contract shall be in a form provided by the Authority, and shall include:

(a) A provision that disbursements from the fund will be according to the terms of the contract;

(b) A provision that the liability of the Authority under the contract is contingent upon the availability of moneys in the fund for use in the project;

(c) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting the Authority a lien on or a security interest in the collateral as determined by the Authority to be necessary to secure repayment of the loan or bond;

(d) A provision that, for a period of up to six (6) years after project completion, the Authority may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project;

(e) For a drinking water project, a provision requiring the municipality to install meters on all new active service connections from any distribution lines that may be included in the project;

(f) For a drinking water project with existing, active unmetered service connections, a provision requiring the municipality to install meters on such service connections no later than two years after the completion of the project; and

(g) Other provisions that the Authority considers necessary or appropriate to implement the assistance.

(3) Other funds that may be needed to complete the project must be available or the municipality must have a binding commitment for such funds at the time the contract is executed. If a portion of the other funds needed to complete the project is committed but not available at the time an award is made or the contract executed, the contract shall require that the project be fully funded prior to any disbursement from the fund.

(4) The contract for a loan or grant shall be authorized by an ordinance, order or resolution adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 2-2010(Temp), f. & cert. ef. 1-14-10 thru 7-13-10; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10

123-043-0102

Eligibility Criteria for State Revenue Bond Loans

The Authority shall apply the following standards for determining the eligibility of projects for state revenue bond financing:

(1) Loan repayment must be secured by a full faith and credit pledge of the municipality;

(2) The loan must be of sufficient size as determined by the Authority;

(3) The loan must be fully amortized over its term with fixed annual principal and interest payments, and the term of the loan must not exceed the usable life of the contracted project or 25 years from the year of project completion, whichever is less;

(4) The loan must conform to the requirements of the bond indenture for the state revenue bonds; and

(5) The loan and the municipality must meet the minimum underwriting criteria for state revenue bond financing as established by Department policies.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10

123-043-0105

Remedies

The Department may pursue any remedies available to it against a municipality upon the occurrence of an event of default under the Authority's contract with the municipality.

Stat. Auth.: ORS 285B.563 & 285A.075

Stats. Implemented: ORS 285B.560 - 285B.599

Hist.: EDD 7-2002, f. & cert. ef. 4-26-02; EDD 11-2006, f. & cert. ef. 11-3-06; EDD 25-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 30-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: These rules revise First Source Hiring Agreements.

Adm. Order No.: OBDD 31-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 123-070-1000, 123-070-1100, 123-070-1500, 123-674-0200

Rules Ren. & Amend: 123-070-2100 to 123-674-7700, 123-070-2200 to 123-674-7710, 123-070-2300 to 123-674-7720, 123-070-2400 to 123-674-7730

Subject: The revisions for these rules are basic housekeeping changes such as updating statute references and removing and updating definitions.

Rules 123-070-2100 through 123-070-2400 are being renumbered to be included in division 674 Standard Exemption on Taxable Enterprise Zone Property.

Rule 123-674-0200 has two minor housekeeping changes related to employment terminology for the Standard Exemption on Taxable

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Enterprise Zone Property that were left out of the language we filed on June 14, 2010.

Rules Coordinator: Mindee Sublette—(503) 986-0036

123-070-1000

Purpose and Scope

(1) The purpose of this division of administrative rules is to implement ORS 461.740, under which business firms are required to enter into a First Source Agreement if benefiting from funds derived from the Oregon State Lottery through certain economic or community development programs, as determined by the Oregon Business Development Department.

(2) Provisions of this division of administrative rules also apply to businesses benefiting under the following tax incentive programs, as provided by the relevant statutes:

(a) The “Strategic Investment Program” under ORS 285C.600 to 285C.626 and 307.123, as specified in OAR 123-623; and

(b) The standard exemption in “enterprise zones” under ORS 285C.050 to 285C.250, as specified in OAR 123-674.

(3) Requiring Benefited Businesses to enter into a First Source Agreement is intended to help individuals, who are already receiving job training and assistance supported by public funds, by linking these individuals with private sector employment opportunities of businesses that:

(a) Will be hiring in association with the receipt of public benefits; and

(b) Should make a good faith effort to hire and retain such individuals, who are presumed to have low incomes or otherwise face disadvantages in finding employment.

(4) First Source Agreements and this division of administrative rules are not intended to do the following:

(a) Guarantee employment for any such individual;

(b) Dictate the actual hiring by a Benefited Business; or

(c) Necessarily accomplish other public or social objectives associated with employment opportunities.

(5) As used in ORS 461.740(1), “good faith effort to hire and retain as employees low-income individuals who have received job training assistance from publicly funded job training providers” means the Benefited Business will reasonably honor the terms of the First Source Agreement entered into with the Contact Agency for local Providers.

Stat. Auth.: ORS 285A.075, 285C.060(1), 285C.215(3) & 285C.615(7)
Stats. Implemented: ORS 285C.060, 285C.175, 285C.215, 285C.606 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0300; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

123-070-1100

Definitions

For purposes of this division of administrative rules, in addition to definitions in OAR 123-001 (Procedural Rules), unless the context demands otherwise:

(1) Contact Agency means the entity that represents publicly funded job training providers. It shall designate a Contact Person charged with interacting with Benefited Businesses and other entities and with representing the Contact Agency on matters related to First Source Agreements.

(2) First Source Agreement means the contract between a Benefited Business and Providers, as executed by a Contact Agency, under this division of administrative rules, and it has the same meaning as “first-source hiring agreement” under ORS 285C.050, 285C.606 and 461.740. It covers and is applicable to all of the Benefited Business’s hiring or job openings, except for those persons or positions that are:

(a) Hired solely to construct, renovate or install property;

(b) Excluded by a waiver in accordance with OAR 123-070-1500; or

(c) Specified in OAR 123-674 as inapplicable for enterprise zone purposes.

(3) Interagency Agreement is the agreement entered into among Providers as specified in OAR 123-070-1200.

(4) Provider has the same meaning as “publicly funded job training provider;” as used in ORS 285C.050, 285C.606 and 461.740 and means one of the following:

(a) A local office of the Oregon Department of Human Services that delivers training or employment services for low-income parents, seniors, persons with disabilities and so forth;

(b) An administrative agent for programs under the federal

Workforce Investment Act of 1998 (Public Law 105-220) or amendments thereto;

(c) A community college of this state;

(d) A government or government-supported entity, similar to those in subsections (a) to (c) of this section, that is directly or indirectly engaged in training or assisting people to perform or succeed in the workplace or in a particular occupation; or

(e) Any other entity that is a party to the Interagency Agreement as described in OAR 123-070-1200, but such inclusion is effective only insofar as the entity, including but not limited to a local office of this state’s Employment Department, remains such a party.

(5) Qualified Applicants means individuals who have received job training assistance and who meet the Benefited Business’s minimum requirements for education, experience, reliability and skills, or who are able to meet these requirements within a reasonable time period (as negotiated with the Benefited Business) with training provided either by the Benefited Business or by a Provider.

(6) As used in section (5) of this rule and OAR 123-070-1000, “received job training assistance” means the individual has received intake or other services from a Provider.

Stat. Auth.: ORS 285A.075, 285C.060(1), 285C.215(3) & 285C.615(7)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.215, 285C.606 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0310; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 1-2009, f. 2-23-09, cert. ef. 2-24-09; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

123-070-1500

Waivers and Geographic Coverage of First Source Agreements

(1) Except in the case of the Strategic Investment Program, the Director may issue a waiver that does the following:

(a) Relieves a Benefited Business of the requirement of entering into the First Source Agreement, entirely; or

(b) Excludes professional, managerial, technical, highly skilled or seasonal positions of a Benefited Business from the First Source Agreement.

(2) The Director shall make the final decision to grant the waiver, upon written recommendation by staff that explains why:

(a) The Benefited Business’s small size or the technical, professional or unusual nature of its needs with respect to employees means that it will be unable to fill positions with persons referred by the Providers, either in general or for the excluded positions, and will thus receive little or no meaningful service through the First Source Agreement; or

(b) The waiver will further the goals or purposes of applicable and specified state policies, whether or not such policies are directly associated with the program.

(3) A Benefited Business may request a waiver by the Department under this rule at the time of application for the grant or loan assistance, or before execution of the contract for such assistance, in the case of lottery-funded programs, or at any time prior to qualifying for an enterprise zone exemption.

(4) Department staff will notify the Benefited Business and the Contact Agency for the geographic area in which the Benefited Business is located of the Director’s decision and send a copy of any approved waiver. Such notice and distribution shall also include other entities as described in OAR 123-674, as applicable for an enterprise zone exemption.

(5) Except for an enterprise zone exemption, the First Source Agreement entered into by a Benefited Business shall apply only to the Benefited Business’s operations at the site receiving the benefit, unless other locations are:

(a) Designated by the Department; or

(b) Specifically agreed to by the Benefited Business and the Contact Agency.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.060, 285C.215 & 461.740
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 9-1991, f. 9-6-91, cert. ef. 9-9-91; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0330; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09; OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

123-674-7700

First-Source Coverage

For purposes of an authorized or qualified business firm’s entering into a First Source Hiring Agreement in an enterprise zone:

(1) “Contact agency” means the entity that represents publicly funded job training providers, consistent with OAR 123-070, which is exclusively the local office of Worksource Oregon (State Employment Department).

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(2) The agreement shall apply to all of the firm's sites of operation within the enterprise zone but only for that zone, except for "job openings" that do not matter directly under ORS 285C.050 and 285C.200 (see OAR 123-674-0200).

(3) Whenever the firm intends to fill a job opening with someone, who in a voluntary, temporary, part-time or other capacity, has been working at the business or job site for at least 30 days prior to closure date of the job opening:

(a) The firm must indicate this situation and include the name of the prospective hire in its notification to the contact agency.

(b) With receipt of such notification, the contact agency is in no way obligated to send job applicants.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; Renumbered from 123-070-2100 by OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

123-674-7710

First-Source Procedures

(1) A Firm/applicant shall enter into an agreement as described in OAR 123-070 either:

(a) After the local zone manager approves the application for authorization (see 123-674-2300);

(b) Before hiring new employees to qualify under ORS 285C.200; or

(c) Both as possible.

(2) The local zone manager shall:

(a) Advise every Firm/applicant to promptly seek such an agreement;

(b) Notify the contact agency about the Application and about how to contact the business firm; and

(c) Send the contact agency the appropriate colored copy from the completed Approval Form.

(3) Upon learning of the Firm/applicant, the contact agency shall arrange an opportunity for it to execute an agreement. A Firm/applicant shall have the right to initiate such contact and to enter promptly into an agreement.

(4) The contact agency shall:

(a) Provide a copy of each executed agreement to the respective local zone manager within 10 business days of entering into it with a Firm/Applicant; or

(b) Notify the local zone manager of any problem that arises in association with executing it.

(5) The local zone manager shall:

(a) See that each authorized business firm has entered into a timely, valid and accurate agreement, in accordance with OAR 123-070; and

(b) Inform the county assessor under ORS 285C.215(2)(a) of any such firm that might have failed to enter into such an agreement.

(6) The local zone manager shall assist in advising and explaining to business firms their obligations under the agreement, including but not limited to requests by the contact agency or any publicly funded job training provider.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215
Hist.: EDD 7-1989(Temp), f. & cert. ef. 10-17-89; EDD 8-1990, f. 4-13-90, cert. ef. 4-14-90; EDD 22-1990(Temp), f. & cert. ef. 8-9-90; EDD 3-1992(Temp), f. 3-12-92, cert. ef. 3-13-92; EDD 1-1996, f. 2-28-96, cert. ef. 3-1-96; EDD 3-2000, f. & cert. ef. 2-1-00, Renumbered from 123-070-0370; EDD 1-2005, f. & cert. ef. 2-25-05; Renumbered from 123-070-2200 by OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

123-674-7720

Handling Exemption Claims

For purposes of the First Source Hiring Agreement and the county assessor's processing of an initial exemption claim with property schedule as described in OAR 123-674-6100, except in the case of a general waiver under ORS 285C.215(3) (see OAR 123-070):

(1) An authorized business firm may attach a copy of the agreement to the claim form.

(2) For purposes of ORS 285C.175(1)(c), the assessor shall rely principally on the zone sponsor and contact agency to inform the assessor's office under ORS 285C.215(2) if a requisite agreement is lacking.

(3) To verify the existence, effectiveness or general suitability of the agreement, the assessor may do the following:

(a) Request and receive an agreement copy from the local zone manager, contact agency or Firm/applicant; or

(b) Seek assistance under ORS 285C.230(1)(b) before approving the exemption claim, as a mandatory duty of the zone sponsor.

(4) If learning of a problem with execution of a suitable agreement by the Firm/applicant, then pending a corrective waiver by the Director, the county assessor:

(a) May deny the exemption claim, if the agreement was not executed as described in OAR 123-674-7710.

(b) Shall deny the exemption claim, if the agreement was not executed on or before December 31 directly preceding the first exemption year under ORS 285C.175, does not cover at least all years of exemption, or is otherwise deficient.

(5) The assessor shall deny the exemption under ORS 285C.175(6), if by August 31 of the first tax year of exemption, a problem as described in subsection (4) of this rule is not resolved through copies/documentation of the following:

(a) A (revised/replacement) agreement;

(b) Applicable waiver as allowed in OAR 123-070 or 123-674-7730;

or

(c) Both, as necessary.

(6) Once a business firm is qualified and approved to receive the exemption, the exemption is not subject to later revocation or disqualification for lack of an agreement, except for the case of fraudulent representations.

(7) Subject to requisite resolution of the outstanding problem, the assessor may reverse a denial as described in section (5) of this rule and grant the exemption, as otherwise allowed under the laws and rules governing the procedures and authority of the assessor.

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.060, 285C.105, 285C.175, 285C.215, 285C.220, 285C.240
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09; Renumbered from 123-070-2300 by OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

123-674-7730

Allowing Late Execution of First-Source Agreement

For purposes of an authorized business firm's needing to have entered into a First Source Hiring Agreement:

(1) The Director may issue a waiver that excuses the requirement until the time when the agreement is actually executed or takes effect, such that the firm is not required to have been entered into the agreement:

(a) At the time of applicable hiring; or

(b) On or before December 31 of the year when qualified property is placed in service, directly before the first exemption year, as otherwise required under ORS 285C.215(1).

(2) The Director may issue waiver as described in section (1) of this rule for the following reasons:

(a) The Firm/applicant was using first-source services in a timely fashion, without having a formal agreement;

(b) Mistaken communications, an absence of local contacts or the like hampered the ability or understanding of the Firm/applicant as to the agreement or the need to enter into it;

(c) The Firm/applicant made a good faith effort to obtain an agreement, but it was misled or otherwise unable to readily obtain it through no fault of its own; or

(d) Similar circumstances.

(3) The local zone manager, county assessor or contact agency on behalf of the authorized business firm or the firm itself may seek a waiver under this rule by contacting the Department after authorization, whether before or after an action by the county assessor as described in OAR 123-674-7720.

(4) A waiver under this rule shall take the form of a written recommendation from staff to the Director that the Director approves. The written recommendation shall describe:

(a) The justification for the waiver pursuant to this rule;

(b) The basis or source of evidence for such justification or determinations, including but not limited to verbal communications with the contact agency, the county assessor or other local parties;

(c) The status of the Firm/applicant's entering into an agreement; and

(d) The date by which the agreement must be in effect.

(5) The Department shall provide notice of the Director's decision and distribute copies of any approved waiver, as well as any waiver as described in OAR 123-070 affecting an enterprise zone exemption, to the:

(a) Firm/applicant;

(b) County assessor;

(c) Contact agency;

(d) Local zone manager; and

(e) Department of Revenue (Attention: Exemptions Specialist, Property Tax Division).

Stat. Auth.: ORS 285A.075, 285C.060(1) & 285C.215(3)
Stats. Implemented: ORS 285C.050, 285C.060, 285C.200 & 285C.215
Hist.: EDD 3-2000, f. & cert. ef. 2-1-00; EDD 1-2005, f. & cert. ef. 2-25-05; EDD 26-2009, f. 11-30-09, cert. ef. 12-1-09; Renumbered from 123-070-2400 by OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

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123-674-0200

“Employment” Terminology

As used in OAR 123-674-0100, with respect to counting the “number of employees” for purposes of this division of administrative rules, especially OAR 123-674-4000 to 123-674-4800:

(1) It does not involve averaging based on hours worked, such as full-time equivalency, but rather relies on counting full-time, year-round jobs associated with relevant business operations throughout the enterprise zone, either at a particular time or on average over a year or 12-month period.

(2) It relates primarily to “employees of the firm” or “employment of the firm,” as used in ORS 285C.200 and 285C.210, which:

(a) Includes positions or persons who are:

(A) Employed directly by the business firm, or retained by lease or contract with the person or a third party, but the firm selected and directly manages them;

(B) Engaged a majority of their time in eligible operations under ORS 285C.135, including but not limited to persons who perform eligible activities as described in OAR 123-674-1100 or 123-674-1200(3) or (4); and

(C) Located anywhere inside the enterprise zone in terms of where they spend at least 75 percent of their time on the job, as well as official work site.

(b) Excludes positions or persons who are employed or performing work:

(A) At temporary or seasonal jobs;

(B) For 32 or fewer hours per week;

(C) Solely in the construction, modification or installation of qualified property;

(D) Regularly outside the zone boundary;

(E) The majority of their time in ineligible operations; or

(F) With any other business firm, including but not limited to affiliates or commonly owned companies.

(3) Consistent with subsection (2) of this rule, only full-time jobs with the firm that are filled indefinitely and exist year-round at the firm’s eligible operations inside the zone are normally counted. The following are exceptions:

(a) Only employees who work at the particular headquarter-type facility (see OAR 123-674-1700) matter, irrespective of paragraph (2)(a)(C) of this rule and of other eligible employees inside the zone;

(b) For the transfer of eligible operations within 30 miles of zone boundary, further requirements described in OAR 123-674-4100(4) and 123-674-4600(2) also cover employees at affected sites.

(c) The prohibition on jobs losses more than 30 miles outside the zone comprises persons employed with any business operations in Oregon, not only the eligible kind (see 123-674-4200).

(d) Jointly owned firms may combine their employment throughout the zone subject to section (4) of this rule.

(e) Temporary workers filling permanent positions are acceptable if the county assessor and the local zone manager conclude that:

(A) The qualified business firm is making every reasonable effort to fill such positions with permanent, regular hires; and

(B) The temporary workers and other potentially available job applicants do not meet reasonable, minimum standards of the firm for permanent hire, such as a high school diploma or equivalency.

(4) Under ORS 285C.135(4), two or more business firms with 100-percent common ownership may elect to be treated as a single firm for combining zone employment, irrespective of paragraph (2)(b)(F) of this rule, if authorized representative(s) of the firms or a parent company formally notify the local zone manager and county assessor to that effect before the initial exemption claim under ORS 285C.220. Such an election affects all applicable provisions under ORS 285C.050 to 285C.250 and this division of administrative rules, including but not limited to rendering moot any inter-firm lease of qualified property (which would then all be simply owned by the Firm/applicant), but it does not carry over to any subsequent authorization except in a terminated zone.

(5) Only newly created jobs may satisfy required increases in employment levels, as opposed to any employee associated with the merger or acquisition of another business firm or its existing operations or property, except positions inside the zone that were vacant for 60 or more days at the time of Application, and for which reemployment was unlikely.

(6) As used in this rule and under ORS 285C.050:

(a) “Person” may mean two or more part-time employees who together perform a single job involving more than 32 hours of work per week by virtue of an established (job-sharing) arrangement.

(b) “32 hours per week” is computed by taking the total number of hours over the course of a year, for which the person is reimbursed in the

form of wage or salary, including but not limited to paid holidays, vacation and so forth, and dividing by 52.

(c) “Temporary or seasonal jobs” are nonpermanent positions, including but not limited to persons acquired and receiving compensation through the firm or an outside agency on a short-term, ad hoc or as-needed basis, or where the firm hires, leases or contractually employs a persons for any anticipated period of less than 12 consecutive months during the course of the year.

(7) It does not relate to the method or means, by which the business firms identifies or considers persons for hire, including but not limited to there being no necessary relationship between minimum employment requirements and the requisite First Source Hiring Agreement in OAR 123-070 and 123-674-7700 to 123-674-7730.

Stat. Auth.: ORS 285A.075 & 285C.060(1)

Stats. Implemented: ORS 285C.050, 285C.135, 285C.200 & 285C.210

Hist.: OBDD 27-2010, f. & cert. ef. 6-14-10; OBDD 31-2010, f. 6-30-10, cert. ef. 7-1-10

Oregon Business Development Department, Oregon Arts Commission Chapter 190

Rule Caption: These rules revise the 1% for Art in Public Buildings Program.

Adm. Order No.: OAC 1-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Adopted: 190-020-0012, 190-020-0013, 190-020-0074, 190-020-0080, 190-020-0085

Rules Amended: 190-020-0000, 190-020-0005, 190-020-0010, 190-020-0015, 190-020-0025, 190-020-0030, 190-020-0035, 190-020-0040, 190-020-0050, 190-020-0055, 190-020-0060, 190-020-0065

Rules Repealed: 190-020-0045, 190-020-0070

Subject: These rules have been revised to include the Public Art Advisory Committee as well as information on the Prequalified Roster. The Selection Committee rules have been updated to better define its purpose. Two new rules have been added to explain the process and procedures for Relocation and Deaccession of Works of Art.

Rules Coordinator: Mindee Sublette—(503) 986-0036

190-020-0000

Purpose

The purpose of these rules is to:

(1) Establish procedures for acquisition of works of art in an amount of 1% of direct construction costs of any project for the construction or alteration of any State Building in an amount of \$100,000 or more.

(2) Promote placement of visual art of the highest quality where it can be easily viewed by the general public.

(3) Utilize the talent of artists and craftspeople.

(4) Preserve, encourage, and promote public awareness and understanding of the arts.

Stat. Auth.: ORS 359.025 & 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0005

Definitions

The words and phrases used in these rules have the same meaning given them in ORS 276.073. In addition, as used in these rules, unless the context requires otherwise:

(1) “Architect” means the person or firm (architect, landscape architect, interior designer, or other design professional) designing the project to which the 1% provision applies.

(2) “Artist” means a practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent, who produces Works of Art and who is not the Project Architect.

(3) “Capitol Area” means the area defined in ORS 276.028.(4) “Contracting Agency” means the state agency authorized by law to enter into public contracts.

(4) “Deaccession” means removal of a work of art from the public collection as described in OAR 190-020-0080.

(5) “Designated Agencies” means the Oregon Arts Commission, Department of Administrative Services and, for project located outside of the Capitol Area, the Contracting Agency.

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(6) "Program" means the 1% for art program described in ORS 276.073 to 276.090.

(7) "Project" means the construction or alteration of a State Building that costs \$100,000 or more.

(8) "Resident Agency means the state agency or agencies that will occupy or otherwise use State Building. The Resident Agency may be the Contracting Agency.

(9) "State Building" means any structure built or remodeled by the State of Oregon using legislatively appropriated monies except those excluded in the definition of state building in ORS 276.073. "State Building" does not include a building leased by a state agency, unless under a lease-purchase agreement or under any other agreement whereby ultimate state ownership is contemplated or expected.

(10) "Works of Art" means all forms of original creations of visual art, including and not limited to:

(a) Painting: all media, including both portable and permanently-affixed works such as murals.

(b) Sculpture: in the round, bas-relief, high relief, mobile, fountain, kinetic, electronic, and site specific works placed on public lands in any material or combination of materials.

(c) Visual art comprising other two- and three- dimensional media including but not limited to prints, clay, drawings, stained glass, mosaics, photography, fiber and textiles, wood, metal, plastics and other materials or combination of materials, calligraphy, mixed media, film, video, or any combination of forms of media and documented time-based works or installations.

Stat. Auth.: ORS 359.025 & 359.142
Stats. Implemented: ORS 276.073 - 276.090
Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0010

Overview of Program

(1) The Oregon Arts Commission coordinates the Program. All Oregon State agencies, upon legislative approval of construction budgets, must notify the Oregon Arts Commission in writing of construction budgets or appropriations approved by the Legislative Assembly for any State Building. Upon written authorization by the Oregon Arts Commission, Oregon Arts Commission staff will meet with the Contracting Agency to plan the art selection process.

(2) Each Project will have its own Selection Committee. The Selection Committee is appointed in accordance with, and carries out the functions described in OAR 190-020-0015.

(3) Title for all Works of Art acquired pursuant to ORS 276.073 to 276.090 shall be in the name of the state on behalf of the Contracting Agency or Resident Agency, as determined by the Department of Administrative Services and the Contracting Agency, if the Contracting Agency is an agency other than the Department of Administrative Services.

(4) Works of Art in the state collection are insured by the State Insurance Fund, through the Department of Administrative Services Risk Management Division.

Stat. Auth.: ORS 359.025 & 359.142
Stats. Implemented: ORS 276.073 - 276.090
Hist.: AC 1-1979, f. & ef. 7-23-79; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0012

Public Art Advisory Committee

The Oregon Arts Commission may establish a Public Art Advisory Committee consisting of two Oregon Arts Commissioners and up to seven arts professionals designated by the Oregon Arts Commission. The Oregon Arts Commission may use the Public Art Advisory Committee to make recommendations regarding general policies of the Program. The Public Art Advisory Committee will serve as a review panel for creation of a Rose of Prequalified Artists, may nominate and review artists for consideration by individual Art Selection Committees, and will serve as a review panel for Relocation or Deaccession requests. The Public Art Advisory Committee will not make selections for individual Program projects.

Stat. Auth.: ORS 359.025 & 359.142
Stats. Implemented: ORS 276.073 - 276.090
Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0013

Prequalified Artist Roster

Experienced and talented artists may be prequalified by the Oregon Arts Commission for Program projects. The Oregon Arts Commission publishes a prospectus inviting applications. The Public Art Advisory Committee serves as the review panel and makes recommendations to the Oregon Arts Commission for inclusion on the Prequalified Artists Roster.

Applications may be filed at any time. All artists must reapply at the end of each three-year cycle. The Roster is available to serve as a resource for other public art programs, architecture firms and others seeking artists for projects.

Stat. Auth.: ORS 359.025 & 359.142
Stats. Implemented: ORS 276.073 - 276.090
Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0015

Selection Committee

(1)(a) A Selection Committee shall be established for each Program Project. The Selection Committee, on behalf of the Designated Agencies, shall determine the scope, direction, and particular needs of the Project. Except as provided in subsection (b) of this rule, the Selection Committee is solely responsible for artist selection, review of design, execution, placement and acceptance of Works of Art, and shall communicate such progress to the Designated Agencies.

(b) Exception to sole responsibility for review: The Oregon Arts Commission and the Contracting Agency shall identify other review bodies whose oversight may be required by law or agency policy including, without limitation, state or local historic preservation committees, city design review committees and formalized campus design committees. In such cases, the Selection Committee's recommendation will be submitted for review and approval by these bodies prior to execution of any contracts for Works of Art.

(c) Informal committees established by any of the Designated Agencies, such as user groups of a Project, shall be kept informed of Selection Committee progress, but have no role in approval of the Selection Committee's recommendations. The Designated Agency that establishes an informal committee is responsible for notifying the Selection Committee of the establishment of the informal committee.

(2) The Selection Committee shall consist of up to nine members designated by the Oregon Arts Commission as follows:

(a) The Project Architect;

(b) The Director of the Oregon Arts Commission or designee thereof;

(c) The Director of the contracting agency, or designee thereof, most appropriately the planning/construction project manager;

(d) The Chair of the Capitol Planning Advisory Board, or the Chair's designee, if the project is in Marion or Polk County area (ORS 276.028);

(e) Up to one representative of each resident agency, or in the case of a University, each program, college or school with significant use of the facility;

(f) Such other people who qualify and are approved by the Designated Agencies.

(3) Up to 5 Non-Voting Advisors may be appointed by the Contracting Agency and Resident Agency of the facility to serve on the screening committee and may include: students, museum director, curator, educator, art historian, collector, and concerned members of the community, or other qualified individuals.

(4) Chairman of the Selection Committee: The Public Arts Coordinator of the Oregon Arts Commission shall serve as non-voting chairman.

(5) Voting: Each member of the Selection Committee designated pursuant to Section (2) of this rule will have one vote. A majority vote of members present shall determine the selection recommendations to be made to the Designated Agencies. At least one-half of the members of the Selection Committee must be present to have a vote.

Stat. Auth.: ORS 359.025 & 359.142
Stats. Implemented: ORS 276.073 - 276.090
Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0025

Selection Committee Procedure

(1) The Selection Committee shall meet to consider the particular needs of the Project including budget, suitable art forms, appropriate locations, and method of artist/artwork selection.

(2) The Selection Committee may use any of the following methods for selection of Works of Art for a Project:

(a) Open Competition: A prospectus will be prepared by the Oregon Arts Commission with the approval of the Selection Committee and will be made broadly available to artists. Artists will be asked to submit images or other materials to the Commission. The Selection Committee may commission new work and also may purchase available work.

(b) Two-state competition. An open competition may occur in two stages whereby a limited number of finalists selected from the first stage of competition will be asked to submit more detailed proposals. Each of the

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finalists may enter into a contract with the Contracting Agency that provides for payment of a professional fee for preparation of a detailed proposal or consultation interview. The Oregon Arts Commission or Selection Committee may recommend the amount of the professional fee.

(c) Prequalified Artist Roster: The Selection Committee may interview or commission proposals from one or more artists on the Prequalified Artist Roster, or may make direction selection(s) from the Roster.

(d) Nominated Pool: The Selection Committee may designate an informal panel of arts professionals to nominate artists appropriate for consideration for the Project. The resulting pool will be reviewed by the Selection Committee.

(e) The Public Art Advisory Committee may designate an informal panel of arts professionals to nominate artists appropriate for consideration to the State of Oregon Art Collection. The resulting pool(s) may be reviewed by individual Selection Committees.

(f) Limited Competition: In cases when, in the judgment of the Oregon Arts Commission, it is not feasible to conduct an open competition for a specific Work of Art, the Oregon Arts Commission will initiate a Limited Competition by inviting several artists to submit materials to the Selection Committee. If detailed proposals or consultation interviews are requested, each artist will be paid a professional fee for preparation of the detailed proposal or consultation interview. The Oregon Arts Commission or Selection Committee may recommend the amount of the professional fee.

(g) Direct Selection: When budget constraints or construction schedules are such that the Selection Committee determines that an open competition cannot be held, Direct Selection of the artist(s) or completed work will be made by the Selection Committee.

Stat. Auth.: ORS 359.025 & 359.142
Stats. Implemented: ORS 276.073 - 276.090
Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0030

Criteria for Selecting Works of Art

(1) Style and Nature: Works of Art of any aesthetic persuasion that are in scale, material, form and content with their surroundings may be considered.

(2) Diversity of the Collection: The Oregon Arts Commission seeks to encourage and maintain a diverse collection for the state, including site-specific works developed with collaboration between an artist and design team, existing works of art created by an artist and purchased for permanent installation, and, when appropriate, documented time-based works or installations.

(3) Quality: The inherent quality of the work itself will be the highest priority for selection.

(4) Media: All forms of Works of Art may be considered. Works of Art may be either portable or permanently affixed or integral to the building or structure, or part of a temporary exhibition.

(5) Permanence: Due consideration will be given to structural and surface soundness and to permanence in terms of relative protection against theft, vandalism, weathering, or excessive maintenance or repair costs.

(6) Method of Acquisition: Either existing works or those commissioned for specific Projects may be acquired.

Stat. Auth.: ORS 359.025 & 359.142
Stats. Implemented: ORS 276.073 - 276.090
Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0035

Inclusions

Appropriations under ORS 276.080 for the Program may be spent for:

(1) The Work of Art itself which may include but is not limited to:

- (a) Artist's professional fee;
- (b) Labor of assistants;
- (c) Materials required for production of the Work of Art;
- (d) Professional services such as engineering and fabrication necessary to create or install the Work of Art;
- (e) Artist's studio and operating costs of the artist, including rent, utilities, insurance, and other direct and indirect costs;
- (f) Travel costs for the Artist for site visitation and research;
- (g) Transportation of the Work of Art to the site;
- (h) Installation of the completed Work of Art;
- (i) Documentation of the work in progress or completed Work of Art;
- (j) Contractual services for professionals engaged to install, maintain or clean Works of Art, and for conservation, restoration, project management or photography.

(2) Identification plaques, labels, and other such educational materials that promote and accurately credit the Artist(s) or project.

(3) Waterworks and electrical and mechanical devices, equipment and site work which are integral parts of the Work of Art.

(4) Frames, mats or pedestals necessary for the security of the Work of Art.

(5) Anchorages, containments and devices necessary for the security of the Work of Art.

(6) Works of Art which may be an integral part of the building.

(7) Expenses described in OAR 190-020-0055(3).

Stat. Auth.: ORS 359.025 & 359.142
Stats. Implemented: ORS 276.073 - 276.090
Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0040

Exclusions

Appropriations for the Program may not be spent for:

(1) Reproductions, by mechanical or other means, of original Works of Art.

(2) Decorative, ornamental, or functional elements that are designed by the Architect or consultants engaged by the Architect, as opposed to an Artist commissioned for this purpose.

(3) "Art objects" which are mass produced of standard design.

(4) Directional or other functional elements such as supergraphics, signage, color coding, maps, or other similar elements, except where an Artist is employed to produce them and has primary creative control over the Final Art.

(5) Those items which are required to fulfill the basic purpose of the Resident Agency. Examples would be works of art in the collection of a state museum, or Works of Art fulfilling an interpretive or educational role in a state park, the state library, or a college or university art museum or gallery.

(6) Preparation of the site necessary to receive the Work of Art, including, but not limited to, structural reinforcement, landscaping and utility service to the site, except to the extent the Work of Art is integrated into the structure or site and costs related to construction budget. Any such inclusion of costs for the Work of Art in the construction budget or costs of site preparation included in the art budget must be negotiated among the Designated Agencies and approved by the Oregon Arts Commission.

(7) Energy and water costs for operation of electrical and mechanical systems.

(8) Architect services to comply with OAR 190-020-0050(3)(d).

Stat. Auth.: ORS 359.025 & 359.142
Stats. Implemented: ORS 276.073 - 276.090
Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0050

Responsibilities

(1) The Oregon Arts Commission shall:

(a) In consultation with the Designated Agencies, be responsible for selection, reviewing of design, execution, placement and acceptance of Works of Art", acquired under the Program;

(b) Appoint the members of the Selection Committee to carry out the functions described in OAR 190-020-0015;

(c) Assist the Contracting Agency in contract negotiations with artists;

(d) In consultation with the Resident Agency and Contracting Agency, may transfer Works of Art between public buildings as provided in OAR 190-020-0080;

(e) With the help of professionals, install portable Works of Art and re-hang or relocate Works of Art when it determines such actions are necessary;

(f) In partnership with the Resident Agency, advise regarding necessary maintenance procedures in accordance with the Oregon Arts Commission's Collection Management System.

(g) Maintain complete records and documentation of the collection with the assistance of the Contracting Agency;

(h) Coordinate public information aspects of the project.

(2) The Contracting Agency shall:

(a) Assist the Oregon Arts Commission with identifying new Projects subject to ORS 276.073-276.090, and shall notify the Oregon Arts Commission when construction budgets are approved and funds are available.

(b) Contract with the Architect for administrative or design services, or both, to be rendered in connection with the commissioning of Works of Art, notify the Architect of the state law requiring a non-deductible alloca-

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tion for Works of Art and that the Architect will be a member of and must work closely with the Selection Committee for the Project and with the Artist, and include in its contract with the Architect clauses providing for the Architect's compliance with these rules, including without limitation as provided in section (3) of this rule;

(c) Notify the Oregon Arts Commission of the Project details;

(d) Consult with the Oregon Arts Commission and Screening Committee on the determination of budget and selection procedures;

(e) See that payment is made for all costs, professional fees, purchases and commissions in accordance with all applicable law;

(f) Communicate with the Oregon Arts Commission on Project coordination to assure timeliness of completion of the project;

(g) Contract with the Artist for procurement of Works of Art, including without limitation providing for title to the Works of Art to best in the Contracting Agency or Resident Agency in the name of the state no later than upon completion of installation of the Works of Art.

(h) Together with the Resident Agency, be responsible for security and general maintenance of the Works of Art, including without limitation observing if the Work of Art is in good condition, hanging straight, needs dusting, if labels are missing, or if other measures for security or maintenance are necessary or advisable;

(i) Assist the Oregon Arts Commission with public information aspects of the Project;

(j) Review and authorize all changes proposed involving cost, time, or scope before any changes are made to the Work(s) or Art for the Project;

(k) Assist the Oregon Arts Commission with maintaining an Art Inventory and immediately notify the Oregon Arts Commission if a work needs repair or is missing.

(3) The Architect shall:

(a) Recommend to the Arts Commission and the Contracting Agency specific sites for Works of Art and the scale and type of work thought to be most appropriate;

(b) Act as a member of the Selection Committee;

(c) Work closely with the Artist where required, provide engineering information as it pertains to the building structure and technical assistance to the Artist if requested, and shall supervise the delivery and installation of the Work of Art under contract with the Contracting Agency;

(d) Ensure that all service requirements for the Work of Art are met in the design documents and that the Work of Art may be installed with relative ease.

(4) The Artist shall:

(a) When commissioned by the Contracting Agency to create a Work of Art, execute and complete the Work of Art in a timely and professional manner.

(b) Maintain close contact with the Contracting Agency to assist with Project coordination before and during installation;

(c) Transfer title of newly created or an existing Work of Art to the Contracting Agency;

(d) Deal personally with the other parties in all phases of the negotiations. However, the Artists may designate dealers or other agents to represent them in negotiations;

(e) Maintain a close working relationship with the Architect on commissioned pieces;

(f) Submit all plans drawings, detailed proposals and other required materials related to a proposed Work of Art to the Oregon Arts Commission. All preparatory work remains the property of the Oregon Arts Commission until the final Work of Art is installed, at which time ownership of the preparatory materials reverts to the artist;

(g) Copyright: The artist retains those rights specified in ORS 359.355 unless contract indicates otherwise.

Stat. Auth.: ORS 359.025 & 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-22-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0055

Scope and Nature of Expenditures

(1) While no more than 1% of the amount from capital construction appropriations may be dedicated to the Program, a dollar total greater than 1% can be expended for art in a Project if the additional funds are generated from other sources. The 1% figure is a minimum.

(2) If 1% of total state funds appropriated for direct construction costs for a particular building is not required for the Program on that Project, such unrequired amounts can be utilized for either or both of the following as determined by the Oregon Arts Commission in consultation with the Contracting Agency:

(a) Acquiring Works of Art for existing state buildings;

(b) Acquiring Works of Art by transferring the funds to another construction project.

(3) Administrative costs for the Works of Art on any particular Project, up to ten percent of the amounts billed by the Oregon Arts Commission to the Contracting Agency, may be funded through the 1% appropriation areas Administrative Costs may include only:

(a) Supplies and services connected with public information and education;

(b) Artists' prospectuses for specific projects;

(c) Allowable expenses of the Selection Committee;

(d) Salaries of Oregon Arts Commission staff;

(e) Other costs directly related to Program management.

Stat. Auth.: ORS 359.025 & 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0060

General Principles and Procedures

(1) Freedom of Expression: Because of the bold attempt to meld the imaginations and talents of so many individuals and groups, freedom to reach creative solutions must always be maintained. Artists must be sensitive to the unique qualities of public art and the guidelines and parameters which, of necessity, may be required.

(2) Integration of Art and Architecture: So that Artists and Architects can gain from each others' design insights, all parties should strive for engagement of the Artist as soon as possible after the approval of the Architect's schematic design phase.

(3) Exhibitions and Educational Outreach: Contracting Agencies should consider undertaking the following exhibition and educational outreach opportunities. The Oregon Arts Commission is available to provide consultative assistance, but these activities must be funded with monies other than Program funds, unless they are an integral part of the Final Art:

(a) Exhibition of sketches and maquettes created in limited or open competitions;

(b) Involvement of students and art instructors in workshops with Artists creating Works of Art;

(c) Tours of those sites which exhibit many Works of Art, conducted by trained docents;

(d) Use of state educational and other facilities by the Artist in developing concepts and creating the Work of Art, so that state employees and students can better understand the creative process. Such facilities might include studio space, foundries, machine, welding, and woodworking shops, printing and photographic facilities;

(e) Filming or videotaping the creation and installation of the Work of Art.

(4) Accessibility of Information: All parties will strive to publicize widely all aspects of the Program. All meetings of Selection Committees are open to the public.

(5) Community Support and Advice: While firmly committed to the principle of selection of Artists by authorities in the design professions — The Oregon Arts Commission, Department of Administrative Services, and Contracting Agencies welcome participation and advice from the interested public and employees of the Resident Agency.

(6) Conflict of Interest: All procedures will be conducted and all decisions will be made free of any conflict of interest in accordance with ORS Chapter 244.

(7) Dedication: If a dedication or "unveiling" of a Work of Art is desired, arrangements shall be the responsibility of the Contracting Agency.

Stat. Auth.: ORS 359.025 & 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0065

Documentation and Evaluation

(1) Documentation:

(a) Identification: The Contracting Agency shall assist the Oregon Arts Commission with identification of the Work of Art which may include, without limitation, that plaques or labels identifying the Work of Art, are securely affixed, unobtrusive, and well designed. Plaques, labels or other identifying media shall include the name of the Artist; title of the Work of Art, if any, medium, and year completed;

(b) Registration: The Oregon Arts Commission shall maintain inventory records. The Oregon Arts Commission provides copies of each

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Contracting Agency's inventory records upon request by the Contracting Agency;

(c) Publications: Contracting Agencies are encouraged to publish informative folders and booklets on the Works of Art, such as those in the State Library and the Department of Administrative Services. The Oregon Arts Commission is available to assist with editorial and technical assistance.

(2) Evaluation: The Oregon Arts Commission shall annually make a public report on the projects of the previous year and shall conduct periodic evaluations of the Program.

Stat. Auth.: ORS 359.025 & 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: AC 1-1979, f. & ef. 7-23-79; AC 1-1991, f. 3-22-91, cert. ef. 3-21-91; OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0074

Relocation and Deaccession

(1) Each Relocation and Deaccession action shall be determined on a case-by-case basis. Standards applied to Deaccession shall be at least as stringent as those applied to the acquisition process.

(2) Changes in fashion, taste, administration or the immediate pressures of public controversy are insufficient to support a Relocation or Deaccession action.

(3) Relocation or Deaccession will not be considered until at least five years have elapsed from the date of completion identified under OAR 190-020-0065(1)(a) of permanent Works of Art and acceptance in the case of portable Works of Art, unless special circumstances exist. Special circumstances include, without limitation, when a Work of Art has been damaged beyond repair.

Stat. Auth.: ORS 359.025 & 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0080

Criteria for Relocation or Deaccession

The Oregon Arts Commission may approve a request to consider Relocation or Deaccession of a Work of Art for one or more of the following reasons:

(1) The artwork requires unforeseen excessive maintenance or repair, contains failing materials, faults of design or workmanship, or repairing or securing the Work of Art is or becomes impractical or unfeasible;

(2) It would benefit the collection to replace the Work of Art with another more significant Work of Art by the same Artist;

(3) The Work of Art has been the source of significant, documented adverse public reaction over at least five years, and a broad range of people who come into regular contact with the Work of Art support its removal;

(4) The condition or security of the Work of Art cannot reasonably be guaranteed;

(5) The Work of Art has become significantly less appropriate over time, given changes in the function or character of the collection, setting or the community;

(6) The site is going to be demolished or adapted, and it is not possible to successfully incorporate the Work of Art into redevelopment of the site;

(7) The site is not longer publicly accessible;

(8) There is not suitable new site available for the Work of Art in the same facility;

(9) The Work of Art endangers public safety.

Stat. Auth.: ORS 359.025 & 359.142

Stats. Implemented: ORS 276.073 - 276.090

Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

190-020-0085

Procedure for Relocation or Deaccession

(1) The Public Art Advisory Committee will undertake periodic reviews of the collection and review all Relocation and Deaccession requests submitted to the committee by Oregon Arts Commission staff on behalf of the Arts Commission, a Resident Agency, or the public.

(2) The Public Art Advisory Committee shall make recommendations to the Oregon Arts Commission on all Relocation and Deaccession requests.

(3) Sequence of Action.

(a) Upon receipt of a request for Relocation or Deaccession by a Resident Agency, citizen(s), or the Oregon Arts Commission or its staff, Oregon Arts Commission staff shall prepare a report to the Public Arts Advisory Committee that shall include the condition of the Work of Art, recent photographs, estimated value, reasons for considering Relocation or Deaccession and addressing the criteria contained in OAR 190-020-0080,

options for relocating or repairing the Work of Art when applicable, opinion of the head of the Resident Agency, and any other supporting or relevant information.

(b) The Public Art Advisory Committee shall review the report and may direct Oregon Arts Commission staff to seek additional information about the Work of Art from the community where it is installed, the Artist, art galleries, curators, conservators, appraisers or other arts professionals.

(c) The Public Art Advisory Committee shall recommend to the Oregon Arts Commission whether the request for Relocation or Deaccession should be denied or granted in whole or in part. The Public Arts Advisory Committee may recommend modifying, relocating, selling, donating, disposing of or storing the Work of Art. The recommendation must address the following:

(A) Criteria contained in OAR 190-020-0075, if any, that have been met;

(B) Most appropriate action and method of action;

(C) Specific recommendation if the Work of Art is to be traded or sold for the purpose of purchasing another Work of Art by the same Artist;

(d) The Oregon Arts Commission staff shall prepare a report for consideration by the Oregon Arts Commission at a regularly scheduled meeting that includes at least the following:

(A) The Public Art Advisory Committee's recommendations;

(B) The opinion of the head of the Resident Agency;

(C) To the extent required by any contract between the Contracting Agency and the Artist, the opinion of the Artist, if living, if the Artist has provided an opinion.

(e) If the Oregon Arts Commission determines that a Relocation or Deaccession request may be granted, the Oregon Arts Commission will notify the Contracting Agency of its approval.

(4) Method for Relocation: On rare occasions, a Work of Art in the State of Oregon Public Art Collection may be removed from its original location in a State Building. Works of Art will be removed only with the approval of the head of the Resident Agency (or designee), and the Oregon Arts Commission. When considering new locations, the following criteria apply:

(a) The new location must be a State Building;

(b) If the new location is a different facility, the new Resident Agency must be willing to accept the Work of Art on long-term loan, for a period of at least five years.

(c) If the new location is a different facility, the new Resident Agency must be willing to provide for security and maintenance of the Work of Art.

(d) The new location must be viewed by a broad range of citizens.

(5) Methods of Deaccession: Works of Art will be deaccessioned only with the approval of the Head of the Resident Agency (or designee) and the Oregon Arts Commission. Deaccession shall be accomplished in one of the following manners as determined by the Oregon Arts Commission to be in the best interests of the citizens of Oregon, the State of Oregon Public Art Collection, and the public trust invested in the Oregon Arts Commission as the steward of the collection:

(a) Sale or Trade.

(A) If the Work of Art has not been appraised in the past five years, a certified appraisal will be conducted.

(B) If stated in the approved recommendation, the Artist will be given first option to purchase or trade the Work of Art.

(C) Sale may be by auction, gallery resale or direct bidding by individuals, in compliance with state law and policies governing surplus property.

(D) Trade may be through the Artist or gallery, museum or other institution for one or more Works of Art of comparable value by the same Artist.

(E) No Works of Art may be sold or traded to members or staff of the Arts Commission or Public Art Advisory Committee or their immediate families.

(F) Proceeds from the sale of a Work of Art shall be used to purchase artwork in keeping with the definitions and limitations of the Program and in accordance with the Oregon Arts Commission's decision to approve Deaccession. Funds may be expended with the oversight of the Public Art Advisory Committee. Any preexisting contractual agreements between the Artist and the state regarding resale shall apply.

(b) Destruction of a Work of Art that is deteriorated or damaged beyond repair, or beyond value of the Work of Art, and therefore deemed to be of negligible value. Alternatively, the Work of Art may be returned, in present condition, to the Artist, if living, to the state or representative of the Artist, or to an art conservation research or training facility as a disposable Work of Art.

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(c) If the Oregon Arts Commission is unable to dispose of the Work of Art in a manner described in this section, the Work of Art may be donated to a non-profit organization or otherwise disposed of as the Oregon Arts Commission determines reasonable.

(6) Costs for Relocation or Deaccession. Unless otherwise requested by a person or agency requesting Relocation or Deaccession and approved by the Public Art Advisory Committee, costs for appraising, cleaning or minor repairs to a Work of Art as needed to be suitable for display should be charged to the original Resident Agency. Transportation to storage or a new location should be charged to the original Resident Agency. Installation or any major conservation, reframing, or similar activity should be charged to the new Resident Agency. Costs may be negotiated in the best interests of each entity.

(7) Compliance with Applicable Policies and Regulations. Decaccession of Works of Art shall be done in a manner that complies with all other applicable state and federal law. For example, Decaccession must comply with applicable procedures and laws relating to the disposition of State property and with laws protecting Artists' rights.

Stat. Auth.: ORS 359.025 & 359.142
Stats. Implemented: ORS 276.073 - 276.090
Hist.: OAC 1-2010, f. 6-30-10, cert. ef. 7-1-10

Oregon Criminal Justice Commission
Chapter 213

Rule Caption: Amends Oregon Sentencing Guidelines to implement SB 570 (2009).

Adm. Order No.: CJC 2-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 213-008-0002

Rules Repealed: 213-008-0002(T)

Subject: Under ORS 137.667(2), the Oregon Criminal Justice Commission (the Commission) may adopt changes to the Oregon Sentencing Guidelines. SB 570 (2009) was effective January 1, 2010. That bill contains a directive to the Commission, requiring the Commission to "adopt rules that establish disproportionate impact as an aggravating factor that a court may consider as a substantial and compelling reason to impose an upward departure from a presumptive sentence under the rules of the commission." Section 7, SB 570 (2009). The bill also defines the term "disproportionate impact." Id. This rule is needed to implement this legislative directive. This rule had been previously adopted as a temporary rule. That temporary rule is being repealed with this filing.

Rules Coordinator: Craig Prins—(503) 378-4830

213-008-0002

Departure Factors

(1) Subject to the provisions of sections (2) and (3) of this rule, the following nonexclusive list of mitigating and aggravating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(a) Mitigating factors:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The defendant acted under duress or compulsion (not sufficient as a complete defense).

(C) The defendant's mental capacity was diminished (excluding diminished capacity due to voluntary drug or alcohol abuse).

(D) The offense was principally accomplished by another and the defendant exhibited extreme caution or concern for the victim.

(E) The offender played a minor or passive role in the crime.

(F) The offender cooperated with the state with respect to the current crime of conviction or any other criminal conduct by the offender or other person. The offender's refusal to cooperate with the state shall not be considered an aggravating factor.

(G) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(H) The offender's criminal history indicates that the offender lived conviction-free within the community for a significant period of time preceding his or her current crime of conviction.

(I) The offender is amenable to treatment and an appropriate treatment program is available to which the offender can be admitted within a

reasonable period of time; the treatment program is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and the probation sentence will serve community safety interests by promoting offender reformation.

(b) Aggravating factors:

(A) Deliberate cruelty to victim.

(B) The offender knew or had reason to know of the victim's particular vulnerability, such as the extreme youth, age, disability or ill health of victim, which increased the harm or threat of harm caused by the criminal conduct.

(C) Threat of or actual violence toward a witness or victim.

(D) Persistent involvement in similar offenses or repetitive assaults. This factor may be cited when consecutive sentences are imposed only if the persistent involvement in similar offenses or repetitive assaults is unrelated to the current offense.

(E) Use of a weapon in the commission of the offense.

(F) The offense involved a violation of public trust or professional responsibility.

(G) The offense involved multiple victims or incidents. This factor may not be cited when it is captured in a consecutive sentence.

(H) The crime was part of an organized criminal operation.

(I) The offense resulted in a permanent injury to the victim.

(J) The degree of harm or loss attributed to the current crime of conviction was significantly greater than typical for such an offense.

(K) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim.

(L) Disproportionate impact (for Theft I under ORS 164.055, and Aggravated Theft I under ORS 164.057).

(2) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the Crime Seriousness Scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(3) Any aspect of the current crime of conviction which serves as a necessary element of a statutory mandatory sentence may not be used as an aggravating factor if that aspect is also used to impose the mandatory sentence.

(4) As used in this rule, "disproportionate impact" means:

(a) The offender caused damage to property during the commission of the theft and the cost to restore the damaged property to the condition the property was in immediately before the theft is more than three times the value of the property that was the subject of the theft; or

(b) The theft of the property creates a hazard to public health or safety or the environment.

Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 - 137.669 & SB 570 (2009)

Hist.: SSGB 2-1988, f. 12-30-88, cert. ef. 9-1-89; SSGB 1-1989, f. 5-25-89, cert. ef. 9-1-89; SSGB 2-1989, f. 10-17-89, cert. ef. 11-1-89; SSGB 2-1993, f. 10-28-93, cert. ef. 11-1-93; CJC 1-1996, f. 3-6-96, cert. ef. 3-8-96, Renumbered from 253-008-0002; CJC 1-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10; CJC 2-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Amends Oregon Sentencing Guidelines in light of HB 3508.

Adm. Order No.: CJC 3-2010(Temp)

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10 thru 12-26-10

Notice Publication Date:

Rules Amended: 213-017-0006

Subject: The Criminal Justice Commission (CJC) is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. The Oregon Legislature passed SB 1087 on February 22, 2008. The legislature referred SB 1087 to a vote of the people at the general election of November 4, 2008 through Ballot Measure 57. Ballot Measure 57 was passed by a majority of the voters at the general election. Section 10 of SB 1087 (2008 Oregon Laws chapter 14) changed the crime of Mail Theft or Receipt of Stolen Mail under ORS 164.162 from a Class A misdemeanor to a Class C felony. The Oregon Legislature voted to suspend implementation of portions of Measure 57 in HB 3508 (2009). Following HB 3508 (2009), Mail Theft or Receipt of Stolen Mail under ORS 164.162 is classified as a felony for sentences imposed prior to February 15, 2010 and for sentences imposed for crimes committed on

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or after January 1, 2012. During the intervening time period, that portion of Measure 57 that classified Mail Theft or Receipt of Stolen Mail under ORS 164.162 as a felony is suspended and that crime becomes a Class A misdemeanor. CJC amended the sentencing guidelines to incorporate that change. The amendment contained a typographical error, in which the date "January 1, 2010" was referenced instead of the date "January 1, 2012." This rule change corrects that typographical error.

Rules Coordinator: Craig Prins—(503) 378-4830

213-017-0006

Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

- (1) Chapter 59 – BLUE SKY LAWS & SECURITIES LAWS* – (C).
- (2) MAJOR DRUG OFFENSES (See division 19.)
- (3) ORS 162.015 – BRIBERY – (B).
- (4) ORS 162.025 – BRIBE RECEIVING – (B).
- (5) ORS 162.065 – PERJURY – (C).
- (6) ORS 162.117 – PUBLIC INVESTMENT FRAUD – (B).
- (7) ORS 162.155 – ESCAPE II – (C).
- (8) ORS 162.185 – SUPPLYING CONTRABAND – (C). (The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)
- (9) ORS 162.265 – BRIBING A WITNESS – (C).
- (10) ORS 162.275 – BRIBE RECEIVING BY WITNESS – (C).
- (11) ORS 162.285 – TAMPERING W/ WITNESS – (C).
- (12) ORS 162.325 – HINDERING PROSECUTION – (C).
- (13) ORS 163.160(3) – FELONY DOMESTIC ASSAULT – (C).
- (14) ORS 163.165 – ASSAULT III – (C). (If the offense cannot be ranked at CC 8).
- (15) ORS 163.208 – ASSAULT OF A PUBLIC SAFETY OFFICER – (C).
- (16) ORS 163.213 – USE OF A STUN GUN, TEAR GAS, MACE I – (C).
- (17) ORS 163.257 – CUSTODIAL INTERFERENCE I – (C).
- (18) ORS 163.264 – SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I – (B). (If offender physically restrained or threatened to physically restrain a person; otherwise CC 9.)
- (19) ORS 163.275 – COERCION – (C). (No threat of physical injury; otherwise CC 7.)
- (20) ORS 163.355 – RAPE III – (C).
- (21) ORS 163.385 – SODOMY III – (C).
- (22) ORS 163.432 – ONLINE SEXUAL CORRUPTION OF A CHILD II – (C).
- (23) ORS 163.465 – FELONY PUBLIC INDECENCY – (C).
- (24) ORS 163.525 – INCEST – (C). (If one of the participants is under the age of 18; otherwise CC 1.)
- (25) ORS 163.547 – CHILD NEGLECT IN THE FIRST DEGREE – (B).
- (26) ORS 163.688 – POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I – (B).
- (27) ORS 164.055 – THEFT I* – (C).
- (28) ORS 164.057 – AGGRAVATED THEFT – (B). (Economic loss was greater than \$50,000; otherwise CC 5.)
- (29) ORS 164.065 – THEFT OF LOST/MISLAID PROPERTY * – (C).
- (30) ORS 164.075 – THEFT BY EXTORTION* – (B).
- (31) ORS 164.085 – THEFT BY DECEPTION* – (C).
- (32) ORS 164.125 – THEFT OF SERVICES* – (C).
- (33) ORS 164.135 – UNAUTHORIZED USE OF VEHICLE* – (C).
- (34) ORS 164.138 – CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* – (C).
- (35) ORS 164.140(4) – POSSESSION OF RENTED PROPERTY* – (C).
- (36) ORS 164.162 – MAIL THEFT OR RECEIPT OF STOLEN MAIL – (C). (For sentences imposed prior to February 15, 2010, and for sentences imposed for crimes committed on or after January 1, 2012; otherwise a Class A misdemeanor.)
- (37) ORS 164.215 – BURGLARY II* – (C).
- (38) ORS 164.315 – ARSON II* – (C).
- (39) ORS 164.365 – CRIMINAL MISCHIEF I* – (C).
- (40) ORS 164.377 – COMPUTER FRAUD (LOTTERY)* – (C).
- (41) ORS 164.377(3) – COMPUTER CRIME* – (C).

- (42) ORS 164.868 – UNLAWFUL LABEL SOUND RECORDING* – (C).
 - (43) ORS 164.869 – UNLAWFUL RECORD LIVE PERFORMANCE* – (C).
 - (44) ORS 164.872 – UNLAWFUL LABEL VIDEOTAPE* – (C).
 - (45) ORS 164.877(1) – TREE-SPIKING – (C).
 - (46) ORS 164.889 – INTERFERE W/ AGRICULTURAL RESEARCH* – (C).
 - (47) ORS 165.013 – FORGERY I* – (C).
 - (48) ORS 165.022 – CRIMINAL POSSESSION OF FORGED INSTRUMENT I* – (C).
 - (49) ORS 165.055(3)(A) – CREDIT CARD FRAUD* – (C).
 - (50) ORS 165.065 – NEGOTIATING BAD CHECKS* – (C).
 - (51) ORS 165.074 – UNLAWFUL FACTORING PAYMENT CARD* v (C).
 - (52) ORS 165.692 – FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT – (C).
 - (53) ORS 165.800 – IDENTITY THEFT* – (C).
 - (54) ORS 166.015 – RIOT – (C).
 - (55) ORS 166.165 – INTIMIDATION I – (C).
 - (56) ORS 166.220 – UNLAWFUL USE OF WEAPON – (C).
 - (57) ORS 166.270 – EX-CON IN POSSESSION OF FIREARM – (C).
 - (58) ORS 166.272 – UNLAWFUL POSSESSION OF FIREARM – (B).
 - (59) ORS 166.370(1) – INTENT POSS. FIREARM OR DANG. WEAP. IN and (5)(a) – PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL – (C).
 - (60) ORS 166.382 – POSSESSION OF DESTRUCTIVE DEVICE – (C).
 - (61) ORS 166.384 – UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE – (C).
 - (62) ORS 166.410 – ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS – (B).
 - (63) ORS 166.643 – UNLAWFUL POSSESS SOFT BODY ARMOR – (B). (If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)
 - (64) ORS 167.057 – LURING A MINOR – (C).
 - (65) ORS 167.339 – ASSAULT OF A LAW ENFORCEMENT ANIMAL – (C).
 - (66) ORS 167.388 – INTERFERE LIVESTOCK PRODUCTION* – (C).
 - (67) ORS 647.145 – TRADEMARK COUNTERFEITING II* – (C).
 - (68) ORS 647.150 – TRADEMARK COUNTERFEITING I* – (B).
 - (69) ORS 811.182 – DRIVING WHILE SUSPENDED/REVOKED – (C).
 - (70) ORS 811.705 – HIT & RUN VEHICLE (INJURY) – (C).
 - (71) ORS 813.010 – FELONY DRIVING UNDER THE INFLUENCE – (C).
 - (72) ORS 819.300 – POSSESSION OF STOLEN VEHICLE* – (C).
 - (73) ORS 819.310 – TRAFFICKING IN STOLEN VEHICLES – (C).
- (If part of an organized operation or if value of property taken from one or more victims was greater than \$50,000; otherwise CC 5.)
- (74) ORS 830.475 – HIT AND RUN BOAT – (C).
 - (75) 2009 Oregon Laws Ch 783 – AGGRAVATED HARRASSMENT – (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation. Stat. Auth.: ORS 137.667, 2003 OL Ch. 453, & 2009 OL Ch. 660
Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635, 828 2003 2001 OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, 876, SB 1087 (2008), Ballot Measure 57 (2008), & 2009 OL Ch. 660 & HB 3508 (2009) & 2009 OL Ch. 783
Hist.: CJC 1-1999, f. & cert. ef. 11-1-99; CJC 2-2001, f. 12-26-01, cert. ef. 1-1-02; CJC 2-2003, f. 12-31-03, cert. ef. 1-1-04; CJC 1-2005(Temp), f. & cert. ef. 10-14-05 thru 4-12-06; CJC 1-2006, f. & cert. ef. 4-12-06; CJC 3-2007, f. 12-31-07 & cert. ef. 1-1-08; CJC 2-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-29-09; CJC 2-2009(Temp), f. 3-24-09, cert. ef. 1-1-10 thru 6-29-10; CJC 3-2009(Temp), f. & cert. ef. 6-17-09 thru 12-13-09; CJC 4-2009(Temp), f. & cert. ef. 9-16-09 thru 3-14-10; CJC 5-2009, f. 12-11-09, cert. ef. 12-13-09; CJC 7-2009, f. 12-31-09, cert. ef. 1-1-10; CJC 3-2010(Temp), f. & cert. ef. 6-30-10 thru 12-26-10

Oregon Department of Education Chapter 581

Rule Caption: Delays implementation of new school sports pre-participation examination form.

Adm. Order No.: ODE 9-2010(Temp)

Filed with Sec. of State: 6-30-2010

ADMINISTRATIVE RULES

Certified to be Effective: 6-30-10 thru 11-26-10

Notice Publication Date:

Rules Amended: 581-021-0041

Subject: The rule amendment delays the requirement that medical providers must use the newly adopted “School Sports Pre-Participation Examination May 2010” until April 30, 2011.

Rules Coordinator: Diane Roth—(503) 947-5791

581-021-0041

Form and Protocol for Sports Physical Examinations

The State Board of Education adopts by reference the form entitled “School Sports Pre-Participation Examination May 2010” that must be used to document the physical examination and sets out the protocol for conducting the physical examination. Medical providers conducting physicals on or after April 30, 2011 must use the form dated May 2010.

NOTE: The form can be found on the Oregon School Activities Association (OSAA)

website: www.osaa.org

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.479

Hist.: ODE 24-2002, f. & cert. ef. 11-15-02; ODE 29-2004(Temp), f. & cert. ef. 9-15-04 thru 2-25-05; ODE 4-2005, f. & cert. ef. 2-14-05; ODE 9-2010(Temp), f. & cert. ef. 6-30-10 thru 11-26-10

Rule Caption: Specifies requirements related to educational assistants employed by public education providers.

Adm. Order No.: ODE 10-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10

Notice Publication Date: 5-1-2010

Rules Amended: 581-037-0005, 581-037-0006, 581-037-0015, 581-037-0025

Rules Repealed: 581-037-0030

Subject: The rule amendments modify requirements relating to educational assistants including paraprofessionals and instructional aides. The amendments make the rules compliant with federal law. The amendments include provisions on supervision, qualifications, assignment and supervision.

Rules Coordinator: Diane Roth—(503) 947-5791

581-037-0005

Definitions

The definitions below apply to OAR 581-037-0005 to 581-037-0025:

(1) “Educational assistant” means an educational assistant as defined in ORS 342.120. The terms “paraprofessional” and “instructional aide” have the same meaning as “educational assistant”.

(2) “Early Childhood Specialist” means a person as defined in OAR 581-015-2905.

(3) “Early Childhood Supervisor” means a person as defined in OAR 581-015-2910.

(4) “Related service provider” means a person registered, certified or licensed by the State of Oregon as qualified to provide a particular related service, as defined in ORS 343.035, that requires State registration, certification or licensing.

(5) “Title I, Part A (I-A)” means a supplemental federally funded program under the Elementary and Secondary Education Act.

(6) “Title I-A educational assistant” means an educational assistant employed or contracted in:

(a) A Title I-A targeted assisted school and is paid in whole or in part with Title I, Part A funds; or

(b) A Title I-A school-wide program school; or

(c) A school district expending Title I, Part A funds to provide instructional support to a public school teacher who provides equitable services to eligible private school children.

(7) “Teacher” means a teacher as defined in ORS 342.120.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051, 342.120 & 343.041

Hist.: 1EB 118, f. 11-28-67, ef. 12-25-67; 1EB 131, f. 5-12-72, ef. 6-1-72; 1EB 227, f. & ef. 6-4-76; 1EB 15-1980, f. & ef. 6-9-80; EB 7-1990, f. & cert. ef. 1-26-90; ODE 10-2010, f. & cert. ef. 6-30-10

581-037-0006

Qualifications of Educational Assistants

(1) All educational assistants or others employed or contracted in that capacity must:

(a) Have a high school diploma or the equivalent;

(b) Be at least 18 years of age; and

(c) Have standards of moral character as required of teachers (OAR 584-005-0005).

(2) In addition to the qualifications listed in section (1) of this rule, educational assistants providing translation services must have demonstrated proficiency and fluency, knowledge of and the ability to provide accurate translations from a language other than English into English and from English into a language other than English.

(3) In addition to the qualifications listed in section (1) of this rule, Title I-A educational assistants must have:

(a) Completed two years of study at an institution of higher education;

or

(b) Obtained an Associate’s (or higher) degree; or

(c) Met a rigorous standard of quality and demonstrate through a formal state, or local academic assessment or para-educator certificate program, knowledge of and the ability to assist in instructing:

(A) Reading, writing, and mathematics; or

(B) Reading readiness, writing readiness, and mathematics readiness, as appropriate.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: 1EB 227, f. & ef. 6-4-76; 1EB 20-1980(Temp), f. & ef. 7-15-80; 1EB 5-1981, f. & ef. 2-12-81; EB 7-1990, f. & cert. ef. 1-26-90; ODE 10-2010, f. & cert. ef. 6-30-10

581-037-0015

Assignment and Direction and Supervision of Educational Assistants

(1) The educational assistant shall assist a teacher or Early Childhood Specialist or Supervisor or related service provider only in a supportive capacity. The role of the educational assistant is adaptable to many support tasks, and nothing in these rules should be interpreted as limiting assistants only to the performance of classroom duties. Educational assistant tasks may include but are not limited to:

(a) Instructional support – Tasks performed by assistants to supplement students’ basic instruction by offering students opportunities to practice and apply what they have learned, including social skills, life skills, and transition skills;

(b) Clerical support – Tasks such as preparing materials, duplicating and operating audiovisual equipment, which are primarily concerned with the physical arrangement of the learning environment; and

(c) Student control – Duties such as supervision of students in school buildings, buses, and grounds including but not limited to lunch rooms, and playground areas, assisting with fire drills, monitoring students in hallways, etc.

(d) Personal care;

(e) Translation or Parent/Family Involvement activities; and

(f) Media center or computer laboratory support.

(2) Any educational assistant assigned to instruction-related activities shall work under the supervision of an appropriately licensed teacher (or administrator, Early Childhood Specialist or Supervisor; or related service provider). Supervision means:

(a) The assigned teacher (or administrator, Early Childhood Specialist or Supervisor; or related service provider) plans the instructional activities that the educational assistant carries out;

(b) The assigned teacher (or administrator, Early Childhood Specialist or Supervisor; or related service provider) evaluates the achievement of the students with whom the educational assistant is working; and

(c) The assigned teacher (or administrator, Early Childhood Specialist or Supervisor; or related service provider) provides a supervision plan that includes regular monitoring of the educational assistant’s effectiveness and access to assistance and consultation.

(3) In addition to the supervision requirements under section (2) of this rule, Title I educational assistants must work in close and frequent proximity to the appropriately licensed teacher identified as “highly qualified” as defined by the federal Elementary and Secondary Education Act.

(4) A plan of supervision for the educational assistant shall provide for:

(a) Access to assistance and consultation; and

(b) Regular monitoring of the educational assistant’s performance to determine effectiveness of the assigned tasks and the effect on students and their families

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: 1EB 131, f. 5-19-72, ef. 6-1-72; 1EB 15-1980, f. & ef. 6-9-80; EB 7-1990, f. & cert. ef. 1-26-90; ODE 10-2010, f. & cert. ef. 6-30-10

ADMINISTRATIVE RULES

581-037-0025

Training of Educational Assistants

Districts employing educational assistants in any capacity shall provide or arrange for suitable training to prepare them to perform such functions as they may be assigned.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: IEB 131, f. 5-19-72, ef. 6-1-72; EB 7-1990, f. & cert. ef. 1-26-90; ODE 10-2010, f. & cert. ef. 6-30-10

Rule Caption: Modifies rules relating to public charter schools.

Adm. Order No.: ODE 11-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10

Notice Publication Date: 5-1-2010

Rules Adopted: 581-020-0334, 581-020-0336

Rules Amended: 581-020-0301, 581-020-0359, 581-020-0380

Subject: SB 767 requires public charter schools to have a sound financial management system. The rule provides the minimum requirements for this system. These rule amendments were previously done as temporary rules. The rule changes also repeal some out of date temporary rules that duplicate other rules.

Rules Coordinator: Diane Roth—(503) 947-5791

581-020-0301

Public Charter School Proposal Review and Approval Process

(1) An applicant must submit proposals to the local school district board and the State Board of Education.

(2) Upon receipt of a proposal from an applicant, the school district board will ensure that the proposal addresses all of the required components as set out in ORS 338.045(2). Within 15 business days of the receipt of a proposal, the school district will notify the applicant as to the completeness of the proposal. Proposals that minimally address or leave out any of the required components are not complete and may be returned to the applicant. A proposal that included, for example, a reprinting of the charter school statutes as its response to a required component, would minimally address that component and would not be complete. A proposal that addressed a required component based on an incorrect budget assumption or in a manner that is unsatisfactory to the local school district would nonetheless be complete.

(3) Within 60 days of the notification to the applicant of the school district's receipt of a complete proposal, the school district board must hold a public hearing on the proposal in accordance with Oregon public meeting laws (ORS 192.610 through 192.695, 192.710, and 192.990).

(4) The school district board must evaluate the proposal in good faith using the following criteria:

(a) Demonstrated, sustainable support for the public charter school by teachers, parents, students and other community members, including comments received at the public hearing held under section (3) above;

(b) Demonstrated financial stability of the public charter school, including the demonstrated ability of the school to have a sound financial management system in place at the time the school begins operating;

(c) Capability of the applicant, in terms of support and planning, to provide students with comprehensive instructional programs;

(d) Capability of the applicant, in terms of support and planning, to provide academically low achieving students with comprehensive instructional programs;

(e) The extent that the proposal addresses the components required in ORS 338.045, including any additional components or information required under local school district board policy;

(f) Whether the value of the public charter school is outweighed by any directly identifiable, significant and adverse impact on the quality of the public education of students residing in the school district where the public charter school is located;

(g) Whether there are arrangements for any special education and related services for children with disabilities pursuant to ORS 338.165; and

(h) Whether there are alternative arrangements for students and for teachers and other school employees who choose not to attend or who choose not to be employed by the public charter school.

(5) Within 30 days of the public hearing, the district school board must either approve or deny the proposal. Written notice of the decision must be sent to applicants. Such notice must include reasons and suggestions for remediation for all proposals that are denied.

(6) An applicant may revise and resubmit the proposal to the district school board.

(7) The local school board must approve or disapprove the revised proposal within 20 days of receipt.

(8) The applicant must forward a copy of the written notice of approval to the State Board of Education.

(9) An applicant whose proposal is not approved by the local school board may request a review of that decision by the State Board of Education under the procedure set out in OAR 581-020-0330.

Stat. Auth.: ORS 338.025

Stats. Implemented: ORS 338.055

Hist.: ODE 13-2000, f. & cert. ef. 5-3-00; ODE 15-2009(Temp), f. & cert. ef. 12-10-09 thru 6-8-10; Administrative correction 6-25-10; ODE 11-2010, f. & cert. ef. 6-30-10

581-020-0334

Sound Financial Management System

(1) A charter school applicant must include a description of a sound financial management system within the proposal submitted to the local school district board and the State Board of Education.

(2) A public charter school must have in place a sound financial management system at the time the school begins operation.

(3) A sound financial system used by a public charter school must minimally have:

(a) Accounting and financial record keeping procedures which reflect Generally Accepted Accounting Principles (GAAP);

(b) Procedures for cash management, investment practices and financial reporting;

(c) Balance sheets reflecting assets, expenditures and liabilities;

(d) Segregation of duties for individuals performing cash management and investment practices; and

(e) Processes reflecting annual review of such systems by both the public charter school and sponsor.

Stat. Auth.: ORS 338.025

Stat. Implemented: ORS 338

Hist.: ODE 11-2010, f. & cert. ef. 6-30-10

581-020-0336

Annual Financial Reporting

(1) A public charter school shall have an annual audit of the accounts of the public charter school prepared in accordance with the Municipal Audit Law, ORS 297.405 to 297.555 and 297.990.

(2) After an audit, the public charter school shall forward the following to the sponsor and the Department of Education:

(a) A copy of the annual audit;

(b) Any statements from the public charter school that show the results of all operations and transactions affecting the financial status of the public charter school during the preceding annual audit period for the school; and

(c) An electronic copy of any balance sheet containing a summary of the assets and liabilities of the public charter school and related operating budget documents as of the closing date of the preceding annual audit period for the school.

(3) A charter school satisfies the requirements of section (2)(b) of this rule if the balance sheets submitted by the school summarize the operations and transactions affecting the financial status of the school.

(4) A charter school may satisfy the requirement under ORS 338.095 to send the documents described in section (2) of this rule to the State Board of Education by sending the documents to the department as the state board's designee.

Stat. Auth.: ORS 338.025

Stat. Implemented: ORS 338.095

Hist.: ODE 11-2010, f. & cert. ef. 6-30-10

581-020-0359

Process to Renew Charter

(1) A public charter school governing body must request renewal of the charter (contract) by the sponsor in writing at least 180 days before expiration of the charter.

(2) When a sponsor has received a written request from a public charter school governing body, the sponsor must schedule and hold a public hearing on the renewal request within 45 days from the receipt of the request for renewal.

(3) Within 10 days after the public hearing, the sponsor must notify the public charter school governing body of the sponsor's intent to renew or not renew the charter.

(4) Within 20 days after the public hearing, the sponsor must either:

(a) Renew the charter; or

(b) State in writing the reasons for denying the renewal of the charter.

(5)(a) A sponsor must base its decision to renew or not renew a charter on a good faith evaluation of whether the charter school:

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- (A) Is in compliance with state and federal laws;
- (B) Is in compliance with the terms of the prior charter;
- (C) Is meeting or working toward meeting the student performance goals and agreements specified in the charter or any other written agreements between the sponsor and the public charter school governing body;
- (D) Is fiscally stable and evidence that a sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter was used; and

(E) Is in compliance with any renewal criteria specified in the previous charter, if any.

(b) As used in this section, “good faith evaluation” means an evaluation of all criteria required by this section resulting in a conclusion that a reasonable person would come to who is informed of the law and the facts before that person.

(6) The sponsor must base the evaluation described in section (5) of this rule primarily on a review of the public charter school’s annual performance reports, annual audit of accounts and annual site visit and review as required by ORS 338.095 and any other information mutually agreed upon by the public charter school governing body and the sponsor.

(7)(a) If the sponsor renews the charter, the sponsor and public charter school governing body shall negotiate in good faith a new charter within 90 days after the date on which the sponsor approved the renewal of the charter, unless both parties agree to an extension of time.

(b) If the sponsor and the charter school governing body have not executed a new charter agreement within 90 days after the date on which the sponsor approved the renewal of the charter or an alternative date agreed to by both parties, the charter shall be considered not renewed and the sponsor must state in writing the reasons for denying the renewal of the charter within 100 days after the date on which the sponsor originally approved the renewal of the charter or by a specified alternative date agreed to by both parties.

(c) As used in this section, “negotiate in good faith” means to negotiate with an honest exchange of the facts of the matters under consideration with a view to obtaining agreement of each of the parties involved.

(8) If the sponsor does not renew the charter, the public charter school governing body may address the reasons for nonrenewal and resubmit its request to the sponsor within 30 days after the date on which the sponsor notified the public charter school governing body of the decision not to renew the charter. If a sponsor receives a revised request under this section, the sponsor shall review the request using the process required by sections (2) to (7) of this rule. A public charter school governing board may only submit a revised request once under this section unless otherwise specified by the sponsor.

(9) Notwithstanding sections (1) to (8) of this rule, a sponsor and a public charter school governing body may agree in the charter of the school to a timeline for renewing the charter that is different from the timeline required by sections (1) to (8) of this rule.

(10) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to determine if the charter of a school sponsored by the state board should be renewed. The Superintendent or designee shall follow the procedures and timelines required by this rule. This delegation to the Superintendent or designee includes, but is not limited to:

- (a) Determining the form, contents, and timelines of the renewal;
- (b) Determining the records required for determining the renewal and ordering the production of those records from the public charter school governing body and establishing timelines for the production of those records;
- (c) Requiring the charter school governing body to respond to written or oral inquiries related to the sponsorship;
- (d) Delegating the sponsorship function to Department of Education staff or a hearings officer to conduct a hearing and to issue a proposed order; and
- (e) Issuing a final order.

(11) If the sponsor does not renew the charter based on the revised request for renewal submitted under section (8) of this rule, the public charter school governing body may:

- (a) If the sponsor is a school district, appeal the decision of the sponsor to the State Board of Education under OAR 581-020-0361.
- (b) If the sponsor is the State Board of Education, seek judicial review of the final order under ORS 183.484.

Stat. Auth.: ORS 338.025
Stats. Implemented: ORS 338.065
Hist.: ODE 9-2008, f. & cert. ef. 3-21-08; ODE 15-2009(Temp), f. & cert. ef. 12-10-09 thru 6-8-10; Administrative correction 6-25-10; ODE 11-2010, f. & cert. ef. 6-30-10

581-020-0380

Process for Sponsor to Terminate Charter

- (1) A sponsor may terminate a charter for failure to:
 - (a) Meet the terms of the approved charter or any requirement of ORS Chapter 338, unless waived by the State Board of Education;
 - (b) Meet the requirements for student performance as established in the approved charter;
 - (c) Correct any violation of a federal or state law described in ORS 338.115;

- (d) Maintain insurance as described in the approved charter;
- (e) Maintain financial stability; or
- (f) If the charter is terminated on or after July 1, 2011, failure to maintain, for two or more consecutive years, a sound financial management system described in the proposal submitted under ORS 338.045 and incorporated into the written charter under 338.065.

(2) A sponsor intending to terminate an approved charter must:

- (a) Notify the public charter school governing body in writing at least 60 calendar days prior to the proposed effective date of the termination;
- (b) Include in the notification the grounds for the termination; and
- (c) Deliver the notice to the business address of the charter school.

(3) The governing body of a public charter that has received notice from the sponsor of the sponsor’s intent to terminate the charter may request a hearing by the sponsor. Such a request must be made in writing and be delivered to the business address of the sponsor. Within 30 days of receiving the request for a hearing, the sponsor must provide the public charter school with the opportunity for a hearing on the proposed termination.

(4) If the sponsor reasonably believes that a public charter school is endangering the health or safety of the students enrolled in the public charter school, the sponsor may act to immediately terminate the approved charter and close the public charter school without providing the notice requirements set out in section (3) of this rule.

(5) The governing body of a public charter that is closed under the provisions of section (4) of this rule may request a hearing by the sponsor. Such a request must be made in writing and be delivered to the business address of the sponsor. Within 10 days of receiving the request for a hearing, the sponsor must provide the public charter school with the opportunity for a hearing on the termination.

(6) Nothing in this rule should be construed as limiting the ability of a sponsor and a public charter school to include in the charter a procedural requirement for alternative dispute resolution prior to invoking the termination process.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 338.105
Hist.: ODE 19-2002, f. & cert. ef. 8-2-02; ODE 11-2010, f. & cert. ef. 6-30-10

Rule Caption: Provides definition of virtual public charter school.

Adm. Order No.: ODE 12-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10

Notice Publication Date: 5-1-2010

Rules Adopted: 581-020-0338

Subject: Provides definition of virtual public charter school that applies to charter school laws to implement provision of SB 767 (2009). The rule was previously adopted as a temporary rule.

Rules Coordinator: Diane Roth—(503) 947-5791

581-020-0338

Virtual Public Charter Schools

(1) All statutes and rules that apply to public charter schools also apply to virtual public charter schools. In addition, virtual public charter schools must also meet additional statutory requirements found in ORS Chapter 338.

(2) As used in ORS Chapter 338 and the rules of the State Board of Education, “virtual charter school” means a public charter school that provides online courses. An online course is a course in which:

(a) Instruction and content are delivered primarily on a computer using the internet other electronic network or other technology such as CDs or DVDs;

(b) The student and teacher are in different physical locations for a majority of the student’s instructional period while participating in the course;

(c) The online instructional activities are integral to the academic program of the school as described in its charter; and

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(d) The student is not required to be located at the physical location of a school while participating in the course.

(3) Notwithstanding section (2) of this rule, "virtual public charter school" does not include a public charter school that primarily serves students in a physical location. A charter school is not a virtual public charter school if the schools meet all of the following requirements:

(a) More than 50 percent of the core courses offered by the school are offered at a physical location and are not online courses:

(b) More than 50 percent of the total number of students attending the school are receiving instructional services at a physical location and not in an online course; and

(c) More than 50 percent of the minimum number of instructional hours required to be provided to students by the school under OAR 581-022-1620 during a school year are provided at a physical location and not through an online course.

(4) As used in this rule:

(a) "Core course" means:

(A) English language arts including reading and writing;

(B) Mathematics;

(C) Science;

(D) Social sciences including history, civics, geography and economics

(E) Physical education;

(F) Health

(G) The arts;

(H) Second languages and

(I) Career and technical education

(b) "Physical location" means a facility that is owned, leased or otherwise used by a school to deliver educational services. "Physical location" includes, but is not limited to, a school, library, public building or other physical space utilized by the school. "Physical location" does not include a student's home.

(c) "Public charter school" has the meaning given that term in ORS 338.005.

(5) This rule does not apply to programs or courses offered by school districts, education service districts, alternative education programs or the Oregon Virtual School District.

Stat. Auth.: ORS 338.025

Stats. Implemented: ORS 338.005

Hist.: ODE 12-2010, f. & cert. ef. 6-30-10

Rule Caption: Establishes requirements for concussion training of coaches.

Adm. Order No.: ODE 13-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 6-30-10

Notice Publication Date: 5-1-2010

Rules Adopted: 581-022-0421

Subject: The 2009 Legislative Assembly adopted SB 348 which requires coaches of school athletic teams to receive annual training on concussions. The bill directed the State Board of Education to establish requirements and a timeline for the training.

Rules Coordinator: Diane Roth—(503) 947-5791

581-022-0421

Safety of School Sports — Concussions

(1) As used in this rule:

(a) "Annual training" means once in a twelve month period.

(b) "Coach" means a person who instructs or trains members on a school athletic team and may be:

(A) A school district employee;

(B) A person who volunteers for a school district

(C) A person who is performing services on behalf of a school district pursuant to a contract.

(c) "Concussion" means exhibiting signs, symptoms or behaviors consistent with a concussion following an observed or suspected blow to the head or body.

(d) "Health Care Professional" means a Physician (MD), Physician's Assistant (PA), Doctor of Osteopathic (DO) licensed by the Oregon State Board of Medicine; or nurse practitioner licensed by the Oregon State Board of Nursing.

(e) "Proper medical treatment" means treatment provided by a licensed health care professional which is within their scope of practice.

(f) "Return to participation" means a student can rejoin the athletic event or training.

(g) "Training timeline" means every coach receives the training prior to the beginning of the season for the school athletic team they are specifically coaching.

(h) "Same day" means the same calendar day on which the injury occurs.

(2) Each school district shall:

(a) Develop a list of coaches.

(b) Identify which community (may include state or national) resources the district will use to provide the training as required in section (3) of this rule.

(c) Develop training timelines for coaches of all school athletic teams.

(d) Ensure coaches receive training once every twelve months.

(e) Develop a tracking system to document that all coaches meet the training requirements of this rule.

(f) Ensure no coach allows a member of a school athletic team to participate in any athletic event or training on the same calendar day that the member:

(A) Exhibits signs, symptoms or behaviors consistent with a concussion following an observed or suspected blow to the head or body; or

(B) Has been diagnosed with a concussion.

(g) Ensure no coach will allow a student who is prohibited from participating in an athletic event or training, as described in section (2)(f), to return to participate in an athletic event or training no sooner than the day after the student experienced a blow to the head or body. The student may not return to participate in an athletic event or training until the following two conditions have been met:

(A) The student no longer exhibits signs, symptoms or behaviors consistent with a concussion; and

(B) The student receives a medical release form from a health care professional.

(3) The training required of coaches under this rules shall include the following:

(a) Training in how to recognize the signs and symptoms of a concussion;

(b) Training in strategies to reduce the risk of concussions;

(c) Training in how to seek proper medical treatment for a person suspected of having a concussion; and

(d) Training in determination of when the athlete may safely return to the event or training.

Stat. Auth.: ORS 336.485

Stat. Implemented: ORS 336.485

Hist.: ODE 13-2010, f. & cert. ef. 6-30-10

Oregon Housing and Community Services Department Chapter 813

Rule Caption: Adoption of the Attorney General Model Rules of Procedure.

Adm. Order No.: OHCS 7-2010

Filed with Sec. of State: 6-17-2010

Certified to be Effective: 6-17-10

Notice Publication Date:

Rules Adopted: 813-001-0009

Subject: Adoption of the Attorney General Model Rules of Procedure by reference.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-001-0009

Model Rules of Procedure Governing Rulemaking

The Housing and Community Services Department adopts as its rules of procedure the Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act and in effect on January 1, 2008. The rules governing contested case proceedings, OAR 137-003-0000 to 137-003-0092, and OAR 137-003-0501 to 137-003-0700, when the Department refers a contested case to the Office of Administrative Hearings for assignment of an Administrative Law Judge, apply only for the following purposes:

(1) Imposition of civil penalties under section 4, chapter 619, Oregon Laws 2005 as amended by section 12, chapter 816, Oregon Laws 2009; and

(2) Contesting a determination by the Department under OAR 813-007-0270, as authorized by OAR 813-007-0280.

[ED. NOTE: The Attorney General's Model Rules of Procedure are available from the office of the Attorney General or the Housing and Community Services Department.]

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.025, 183.090 & 183.310 - 183.550

Hist.: OHCS 7-2010, f. & cert. ef. 6-17-10

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Rule Caption: Clarification of language surrounding selection and processing of standby applications for farmworker housing tax credits.

Adm. Order No.: OHCS 8-2010(Temp)

Filed with Sec. of State: 6-17-2010

Certified to be Effective: 6-17-10 thru 12-13-10

Notice Publication Date:

Rules Amended: 813-041-0020

Subject: 813-041-0020(3) Clarification of language surrounding the selection and processing of standby applications by the department.

Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-041-0020

Standby Applications

(1) If the application of a taxpayer under OAR 813-041-0010 is subject to disapproval by the Department solely for the reason that the estimated eligible costs, when aggregated with the estimated eligible costs of all projects approved to that date for the calendar year, exceed the limitation on the total of estimated eligible costs under ORS 315.167, the taxpayer may:

(a) Request reduction of the estimated eligible costs for the project to an amount that, when aggregated with the estimated eligible costs of all projects approved to that date for the calendar year, would not exceed the limitation; or

(b) Request that the Department place the taxpayer on a standby list for future possible eligibility.

(2) Applications on a standby list under this rule are subject to maintenance in any order determined by the Department if they are otherwise determined in the evaluation process to be appropriate for approval.

(3) The Department may select and process a standby application under section (2) of this rule for approval whenever credit becomes available. The taxpayer may update the taxpayer's application as needed within the time provided by the Department.

(4) All outstanding standby applications expire on December 31 of the calendar year of application.

Stat. Auth.: ORS 315.164 - 315.169, ORS 458.650

Stats Implemented: ORS 315.167

Hist.: OHCS 7-2001(Temp), f. & cert. ef. 12-13-01 thru 6-10-02; OHCS 1-2002(Temp), f. & cert. ef. 3-15-02 thru 6-10-02; OHCS 8-2002, f. & cert. ef. 6-6-02; OHCS 3-2009(Temp), f. & cert. ef. 12-15-09 thru 6-12-10; OHCS 6-2010, f. & cert. ef. 6-10-10; OHCS 8-2010(Temp), f. & cert. ef. 6-17-10 thru 12-13-10

Oregon Liquor Control Commission Chapter 845

Rule Caption: Adopt new rule implementing statute creating certificate of approval for importing distilled spirits into Oregon.

Adm. Order No.: OLCC 6-2010

Filed with Sec. of State: 6-22-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 4-1-2010

Rules Adopted: 845-006-0380

Subject: The 2009 legislature passed Senate Bill (SB) 135 which creates new statutory provisions and amended ORS 471.404 effective January 1, 2010. These statutory changes create a new certificate of approval for distilled spirits (plus grain and ethyl alcohol) which authorizes their import into Oregon for sale in the state. This new rule will clarify that a certificate of approval will be automatically issued by the Commission to all manufacturers, importers and vendors who import distilled spirits (or grain & ethyl alcohol) into Oregon, with no application process or fee. The new rule will also establish financial assistance violations as grounds for suspension or revocation of the certificate of approval.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-006-0380

Certificate of Approval for Distilled Spirits

(1) The Commission issues a Certificate of Approval for Distilled Spirits (CER-D) to manufacturers, importers and others who import distilled spirits into Oregon for sale in the state. CER-Ds are also issued to vendors who import grain and ethyl alcohol into Oregon for scientific, pharmaceutical, manufacturing, mechanical or industrial use. There is no fee to obtain a CER-D.

(2) No person may import distilled spirits or grain and ethyl alcohol into Oregon who does not hold a CER-D or whose CER-D is suspended or revoked. Once a CER-D has been revoked it remains revoked until reinstated by the Commission.

(3) The holder of a CER-D is subject to and must comply with the tied house and financial assistance requirements contained in ORS 471.392-400 and Division 13 of Chapter 845 of the Commission's administrative rules. Violation of any provisions of ORS 471.392-400 or Division 13 by a CER-D holder or its agent is grounds for the Commission to suspend or revoke the CER-D.

Stat. Auth.: ORS 471, including 471.030, 471.251, & 471.730(1), (5) & (8)

Stats. Implemented: ORS 471.251 & 471.404

Hist.: OLCC 6-2010, f. 6-22-10, cert. ef. 7-1-10

Rule Caption: Adopt new rule setting standards for approved seller training programs.

Adm. Order No.: OLCC 7-2010

Filed with Sec. of State: 6-22-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 4-1-2010

Rules Adopted: 845-009-0150

Subject: This new rule provides information on Commission-approved training programs that can be used by alcohol sellers to receive a reduced criminal penalty when they sell to a minor. The 2009 legislature passed House Bill (HB) 3343, effective January 1, 2010, giving sellers this new option. HB 3343 amends ORS 471.410 creating a new provision for employees of a liquor licensee or retail sales agent who sell, serve, give or otherwise make alcohol available to a minor. These employees may receive a reduced criminal penalty (a violation for the first two convictions) if they either hold a valid service permit or have completed a Commission-approved training program. This new rule sets the standards and procedures the Commission will use when approving seller training programs and also clarifies recordkeeping responsibilities.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-009-0150

Approved Seller Training Programs

(1) ORS 471.410 provides that an employee of a liquor licensee or retail sales agent who has sold, given or otherwise made available alcohol to a minor may receive a reduced criminal penalty if the employee either holds a valid Oregon service permit or has completed a Commission-approved training program. This rule sets the standards and procedures the Commission uses when approving seller training programs and clarifies recordkeeping responsibilities.

(2) As used in this rule,

(a) "Approved seller training program" means a program approved by the Commission for the purposes of ORS 471.410.

(b) "Seller" means an employee of a liquor licensee or retail sales agent who sells or serves alcohol for on or off-premises consumption.

(3) Program Approval Standards and Process. A licensee or liquor agent may offer a Commission-approved seller training program to its employees. The licensee or agent may apply for Commission approval of their own program or use a Commission-approved seller training program from another source.

(a) To obtain Commission approval of a seller training program an applicant must:

(A) Submit a completed application packet provided by the Commission;

(B) Have a program that meets the Commission's Clerk Training Course Minimum Standards (published December 21, 1999, and available at the Commission's main office at 9079 SE McLoughlin, Portland, OR);

(C) Explain in writing how the program will provide written certification of program completion to each seller who completes the training program.

(b) Commission staff will review the application, and will:

(A) Approve a seller training program that meets the requirements in Section (3)(a) of this rule. The Commission will notify the applicant in writing if the Commission approves the course; or

(B) Return an incomplete application or one that does not meet the requirements of Section (3)(a).

(c) At its discretion, the Commission may periodically conduct a review of a Commission-approved training program to ensure it still meets the Commission's Clerk Training Course Minimum Standards. To conduct

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the review, the Commission may ask an approved program to submit copies of all current materials used in the program. If a training program is found to fall below minimum standards then program approval may be withdrawn.

(4) Record Keeping.

(a) The liquor licensee or retail sales agent should provide written certification of program completion to each seller who completes their Commission-approved seller training program.

(b) It is the seller's responsibility to verify that a training program, whether offered by their employer or from another source, has been Commission-approved, and they may do so by contacting the Commission.

(c) It is the seller (employee of the liquor licensee or retail sales agent) who is responsible for keeping their own records regarding completion of an approved training program. The seller should take these records with them from one employer to the next. It will be up to the seller to provide such records in order to receive the reduced criminal penalty available under ORS 471.410.

Stat. Auth.: ORS 471, including 471.030, 471.040 & 471.730(1) & (5)

Stats. Implemented: ORS 471.410

Hist.: OLCC 7-2010, f. 6-22-10, cert. ef. 7-1-10

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Rule Caption: Amendments allowing alcohol suppliers to provide lists to customers of all retailers carrying their products.

Adm. Order No.: OLCC 8-2010

Filed with Sec. of State: 6-22-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 3-1-2010

Rules Amended: 845-013-0040

Subject: This rule describes the types of advertising that manufacturers or wholesalers are allowed to provide to retailers under the limited exceptions in the financial assistance statutes. The previous rule stated that such advertising must mention "no specific retailer". Wineries, breweries, and other suppliers of wine and malt beverages would like to be able to make available to their customers a listing of the retailers who carry their products. By allowing such listings, a consumer who is looking for a retail store where they can purchase a specific Oregon winery's products, for example, will be able to get that information directly from the winery. While primarily applicable to off-premises retailers, there may be some application to on-premises retailers, including for distilled spirits suppliers. Staff proposed amending this rule to allow manufacturers or wholesalers to furnish lists of all the retailers who carry their products either on the supplier's website or on lists available at the supplier's premises. The amendments include a requirement that any such lists include all retailers without discrimination, and may include only the names and addresses of the retailers. No prices or other information that could steer customers to a particular retailer are allowed. Staff believes that any benefit to a particular retailer under these amendments would be nominal and thus be consistent with the exceptions allowed by statute for items and services of nominal value.

Rules Coordinator: Jennifer Huntsman—(503) 872-5004

845-013-0040

Advertising, ORS 471.398(4)

ORS 471.398(4) allows a manufacturer or wholesaler to provide advertising to a retailer.

(1) Except as authorized under section (2) of this rule, the only advertising a supplier (manufacturer or wholesaler), or its agents, may provide under this statute is generic, off-premises references to the manufacturer or wholesaler's alcoholic beverage products that mention no specific retailer. Some examples include radio and television commercials and billboards.

(2) A supplier, or its agents, may make available to its customers, either on the supplier's website or on lists available at the supplier's premises, the names and addresses of the retail licensees that sell products made or distributed by the supplier. Any such list must include all retailers who carry the products without discrimination, for example, an alphabetical or geographical list. The lists may not include prices or any other information that would appear to promote any particular retailer over other retailers.

(3) A violation of any section of this rule is a Category III violation.

Stat. Auth.: ORS 471 & 472, including 471.030, 471.730(1) & (5), 472.030, 472.060(1) & (2)(d)

Stats. Implemented: ORS 471.398(4) & 471.730(7)

Hist.: OLCC 8-1987, f. 31-3-87, ef. 4-1-87; OLCC 7-1992, f. & cert. ef. 7-1-92; Renumbered from 845-010-0124; OLCC 8-2010, f. 6-22-10, cert. ef. 7-1-10

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Implement House Bill 2704 repeal of workers' compensation offset.

Adm. Order No.: PERS 5-2010

Filed with Sec. of State: 6-17-2010

Certified to be Effective: 6-17-10

Notice Publication Date: 9-1-2009

Rules Repealed: 459-015-0060, 459-076-0060

Subject: House Bill 2704 eliminate the offset for a Workers' Compensation benefit in calculating a disability retirement allowance/benefit for Tier 2 and OPSRP Pension Program members. Implementation of HB 2704 requires the repeal of OAR 459-015-0060 and 459-076-0060.

Rules Coordinator: Daniel Rivas—(503) 603-7713

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Oregon State Lottery Chapter 177

Rule Caption: Amends rule to set compensation rates for Video LotterySM retailers, repeals obsolete rules.

Adm. Order No.: LOTT 7-2010

Filed with Sec. of State: 6-21-2010

Certified to be Effective: 6-27-10

Notice Publication Date: 8-1-2009

Rules Amended: 177-040-0026

Rules Repealed: 177-040-0027, 177-040-0028, 177-040-0029

Subject: The rule changes amend OAR 177-040-0026 to establish the compensation rates for Video LotterySM retailers effective June 27, 2010, and repeal OAR 177-040-0027, 177-040-0028 and 177-040-0029 effective June 27, 2010.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0026

Retailer Compensation — Video LotterySM Games

(1) **General:** The compensation the Lottery shall pay a retailer for the sale of Video LotterySM game shares is calculated on a percentage of net receipts during a business year. "Net receipts" means the amount of money that is received at a retailer's premises from the sale of Video LotterySM game shares after payment for prizes.

(2) **Compensation When Net Receipts Exceed Tier Threshold:** During the course of a business year, when a Video LotterySM retailer's net receipts exceed the threshold of a tier applicable to the retailer under this rule, the Video LotterySM compensation rate shall remain unchanged for the remainder of the business day on which the threshold is exceeded. The compensation rate for that tier, as set forth in this rule shall apply at the start of the next business day.

For example, if a retailer has chosen option (a) under OAR 177-040-0026(4)(a) and on Wednesday the net receipts reach \$175,001, the retailer is compensated at 27.5% of the net receipts for the remainder of the business day. At 5:00 a.m. on the next day, Thursday, which is the start of the next business day, the compensation rate is reduced to 23% of net receipts.

(3) **Applicability:** The compensation rates for the sale of Video LotterySM game shares set forth in this rule apply to compensation for the sale of shares on all Video LotterySM game terminals at all Video LotterySM retailers effective as of the start of the business day beginning June 27, 2010.

(4) **General:** At the time a retailer signs a Retailer Contract, the retailer must choose in writing to receive compensation in accordance with either subsection (4)(a) or subsection (4)(b) of this section. If the retailer fails to choose as required, the Lottery shall compensate the retailer pursuant to subsection (4)(a) of this section for the first business year the Retailer Contract is in effect. For each subsequent business year that the Retailer Contract is in effect, no less than 60 days before the beginning of the upcoming business year, a retailer may submit a written notice to the Lottery that the retailer chooses to be compensated under the alternative compensation method for the upcoming business year. If the retailer does not submit or fails to timely submit a written notice, the Lottery shall compensate the retailer using the retailer's current compensation method for the next business year.

(a) **4-Tier Option:**

Net Receipts per Year
Up to \$175,000
\$175,000.01 to \$475,000

Compensation — Percent of Net Receipts
27.5%
23%

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\$475,000.01 to \$800,000	14%
\$800,000.01 and up	11%

(b) 3-Tier Option:

Net Receipts per Year	Compensation — Percent of Net Receipts
Up to \$600,000	22%
\$600,000.01 to \$1,800,000	17.5%
\$1,800,000.01 and up	11%

Stat. Auth.: ORS 461, OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.300

Hist.: LOTT 4-2004(Temp), f. 4-6-04, cert. ef. 6-27-04 thru 12-23-04; LOTT 8-2004, f. 5-26-04, cert. ef. 5-27-04; LOTT 1-2005, f. 4-11-05, cert. ef. 7-31-05; LOTT 4-2005(Temp), f. & cert. ef. 5-10-05 thru 7-30-05; LOTT 6-2005(Temp), f. 7-27-05, cert. ef. 7-31-05 thru 8-1-05; Administrative correction 8-17-05; LOTT 14-2005(Temp), f. & cert. ef. 11-23-05 thru 5-1-06; LOTT 1-2006, f. & cert. ef. 1-25-06; LOTT 7-2010, f. 6-21-10, cert. ef. 7-27-10

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Rule Caption: Repeals Breakopen rules.

Adm. Order No.: LOTT 8-2010

Filed with Sec. of State: 6-21-2010

Certified to be Effective: 6-27-10

Notice Publication Date: 9-1-2009

Rules Repealed: 177-065-0005, 177-065-0015, 177-065-0020, 177-065-0025, 177-065-0030, 177-065-0035, 177-065-0040, 177-065-0045, 177-065-0055, 177-065-0065, 177-065-0075, 177-065-0080

Subject: The Lottery repealed the Breakopen Game rules as this product is no longer supported by the Lottery, and will not be authorized Lottery game after June 26, 2010.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

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Oregon University System Chapter 580

Rule Caption: To establish Tuition and Fees for the 2010–2011 Academic Year; including Room and Board rates.

Adm. Order No.: OUS 3-2010

Filed with Sec. of State: 6-17-2010

Certified to be Effective: 6-17-10

Notice Publication Date: 3-1-2010

Rules Amended: 580-040-0040

Subject: To establish Tuition and Fees for the 2010–2011 Academic Year; including Room and Board rates.

Rules Coordinator: Shonna Sedgwick Butler—(541) 346-5749

580-040-0040

Academic Year Fee Book

The document entitled “Academic Year Fee Book” dated June 4, 2010, is hereby amended by reference as a permanent rule. All prior adoptions of academic year fee documents are hereby repealed except as to rights and obligations previously acquired or incurred there under.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 4-1978, f. & ef. 6-15-78; HEB 5-1979, f. & ef. 7-20-79; HEB 11-1979, f. & ef. 8-22-79; HEB 1-1980, f. & ef. 4-18-80; HEB 7-1980, f. & ef. 6-18-80; HEB 11-1980, f. & ef. 8-20-80; HEB 4-1981(Temp), f. 6-30-81, ef. 7-1-81; HEB 5-1981, f. & ef. 8-18-81; HEB 15-1981(Temp), f. & ef. 12-18-81; HEB 5-1982, f. & ef. 7-14-82; HEB 4-1983, f. & ef. 7-29-83; HEB 4-1984, f. & ef. 6-20-84; HEB 5-1985, f. & ef. 8-12-85; HEB 12-1986, f. & ef. 7-30-86; HEB 6-1987, f. & ef. 8-4-87; HEB 8-1988, f. & cert. ef. 8-5-88; HEB 10-1988, f. & cert. ef. 11-16-88; HEB 3-1989, f. & cert. ef. 11-27-89; HEB 6-1989, f. & cert. ef. 7-28-89; HEB 7-1990, f. & cert. ef. 6-4-90; HEB 8-1990(Temp), f. & cert. ef. 7-26-90; HEB 12-1990, f. & cert. ef. 10-3-90; HEB 5-1991, f. & cert. ef. 8-15-91; HEB 8-1992, f. & cert. ef. 7-31-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 5-1993, f. & cert. ef. 8-11-93; HEB 7-1994, f. & cert. ef. 8-4-94; HEB 3-1995, f. & cert. ef. 8-1-95; HEB 3-1996, f. & cert. ef. 8-8-96; HEB 5-1996, f. & cert. ef. 12-18-96; HEB 3-1997, f. & cert. ef. 7-24-97; OSSHE 4-1998, f. & cert. ef. 7-22-98; OSSHE 5-1998(Temp), f. & cert. ef. 8-21-98 thru 1-31-99; OSSHE 9-1998, f. & cert. ef. 12-23-98; OSSHE 3-1999(Temp), f. & cert. ef. 7-22-99 thru 1-14-00; OSSHE 4-1999, f. & cert. ef. 9-16-99; OSSHE 3-2000, f. & cert. ef. 7-26-00; OSSHE 4-2001, f. & cert. ef. 7-27-01; OSSHE 8-2002, f. & cert. ef. 8-14-02; OSSHE 2-2003, f. & cert. ef. 8-4-03; OSSHE 6-2004, f. & cert. ef. 6-15-04; OSSHE 2-2006, f. & cert. ef. 6-8-06; OSSHE 3-2007, f. & cert. ef. 6-21-07; OSSHE 6-2008(Temp), f. & cert. ef. 3-20-08 thru 9-1-08; OSSHE 8-2008, f. & cert. ef. 6-17-08; OSSHE 2-2009(Temp), f. & cert. ef. 2-20-09 thru 6-30-09; OSSHE 4-2009(Temp), f. & cert. ef. 3-13-09 thru 6-30-09; Administrative correction 7-21-09; OSSHE 5-2009(Temp), f. & cert. ef. 7-20-09 thru 1-8-10; OSSHE 6-2009(Temp), f. & cert. ef. 10-1-09 thru 1-8-10; Administrative correction 1-25-10; OUS 2-2010, f. & cert. ef. 2-11-10; OUS 3-2010, f. & cert. ef. 6-17-10

Oregon University System, Eastern Oregon University Chapter 579

Rule Caption: Amend special student and course fees.

Adm. Order No.: EOU 2-2010

Filed with Sec. of State: 7-15-2010

Certified to be Effective: 7-15-10

Notice Publication Date: 1-1-2010

Rules Amended: 579-020-0006

Subject: Amend fees charged to students for special use of facilities, services or supplies at Eastern Oregon University.

Rules Coordinator: Lara Moore—(541) 962-3368

579-020-0006

Special Student Fees

Eastern Oregon University intends to adopt by reference Special Student Fees for the 2010–2011 school year.

[ED NOTE: Fee list referenced is available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: EOSC 3, f. & ef. 6-23-76; EOSC 8, f. & ef. 6-16-77; EOSC 6-1978, f. & ef. 10-2-78; EOSC 1-1979, f. & ef. 6-27-79; EOSC 1-1981, f. & ef. 1-12-81; EOSC 3-1981, f. & ef. 7-1-81; EOSC 2-1983, f. & ef. 12-16-83; EOSC 2-1984, f. & ef. 10-25-84; EOSC 1-1986, f. & ef. 2-13-86; EOSC 2-1988, f. & cert. ef. 10-28-88; EOSC 2-1989, f. & cert. ef. 7-31-89; EOSC 2-1990, f. & cert. ef. 10-9-90; EOSC 3-1991, f. & cert. ef. 9-20-91; EOSC 5-1990, f. & cert. ef. 12-20-91 (and corrected 1-2-92); EOSC 1-1992, f. & cert. ef. 5-13-92; EOSC 2-1992, f. & cert. ef. 8-24-92; EOSC 4-1993, f. & cert. ef. 8-2-93; EOSC 4-1994, f. & cert. ef. 7-25-94; EOSC 1-1996, f. & cert. ef. 8-15-96; EOU 1-2001, f. & cert. ef. 9-28-01; EOU 1-2003, f. & cert. ef. 7-31-03; EOU 1-2005, f. & cert. ef. 5-16-05; EOU 1-2006, f. & cert. ef. 4-14-06; EOU 1-2007, f. & cert. ef. 5-14-07; EOU 4-2007(Temp), f. & cert. ef. 8-15-07 thru 1-15-08; Administrative Correction 1-24-08; EOU 1-2008, f. & cert. ef. 3-14-08; EOU 5-2008, f. & cert. ef. 8-15-08; EOU 1-2009, f. & cert. ef. 3-12-09; EOU 2-2009, f. & cert. ef. 8-14-09; EOU 3-2009, f. & cert. ef. 12-15-09; EOU 1-2010, f. & cert. ef. 5-13-10; EOU 2-2010, f. & cert. ef. 7-15-10

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Oregon University System, Oregon Institute of Technology Chapter 578

Rule Caption: To amend the Schedule of special Institution Fees and Charges.

Adm. Order No.: OIT 1-2010(Temp)

Filed with Sec. of State: 6-28-2010

Certified to be Effective: 6-28-10 thru 12-23-10

Notice Publication Date:

Rules Amended: 578-041-0030

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 2010/7/9/2010/2011. The schedule of subject fees may be obtained from the Oregon Institute of Technology office.

Rules Coordinator: Leticia Hill—(541) 885-1133

578-041-0030

Special Institution Fees and Charges

(1) 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 2010–2011 and are hereby adopted by reference.

(2) Copies of this fee schedule may be obtained from the Oregon Institute of Technology Finance and Administration 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

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Oregon University System, Oregon State University Chapter 576

Rule Caption: Sets fees/charges at Oregon State University, fiscal year 2010–2011; changes fee book location.

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Adm. Order No.: OSU 1-2010
Filed with Sec. of State: 6-30-2010
Certified to be Effective: 7-1-10
Notice Publication Date: 5-1-2010
Rules Amended: 576-010-0000

Subject: The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2010–2011. The rules states: “The University hereby adopts by reference a list of fees and charges for fiscal year 2010–2011. The list of fees and charges is available at Oregon State University’s Valley Library, and is hereby incorporated by reference in the rule.”

The amendment will also eliminate one location of placement of the Fee Book for viewing prior to the rulemaking hearing.

Rules Coordinator: Barbara Melton—(541) 737-6262

576-010-0000

Fees and Charges

The University hereby adopts by reference a list of fees and charges for fiscal year 2010–2011. This List of Fees and Charges is available at the Oregon State University Valley Library, and is hereby incorporated by reference in the rule.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070, 352.360 & 580-040-0010

Stats. Implemented: ORS 351.070 & 352.360

Hist.: OSU 3-1980, f. & ef. 10-31-80; OSU 1-1982, f. & ef. 8-27-82; OSU 1-1983(Temp), f. & ef. 9-26-83; OSU 1-1986, f. & ef. 6-4-86; OSU 2-1987, f. 6-11-87, ef. 7-1-87; OSU 2-1988, f. 6-15-88, cert. ef. 7-1-88; OSU 4-1989, f. 6-13-89, cert. ef. 7-1-89; OSU 1-1990, f. 6-15-90, cert. ef. 7-1-90; OSU 6-1991, f. 6-3-91, cert. ef. 7-1-91; OSU 2-1992, f. 6-5-92, cert. ef. 7-1-92; OSU 5-1993, f. 6-9-93, cert. ef. 7-1-93; OSU 1-1994, f. 6-8-94, cert. ef. 7-1-94; OSU 2-1995, f. 6-20-95, cert. ef. 7-1-95; OSU 6-1996, f. & cert. ef. 7-1-96; OSU 5-1997, f. 6-16-97, cert. ef. 7-1-97; OSU 7-1998, f. 6-30-98, cert. ef. 7-1-98; OSU 3-1999, f. 6-17-99, cert. ef. 7-1-99; OSU 1-2000, f. 6-21-00, cert. ef. 7-1-00; OSU 5-2001, f. 6-18-01, cert. ef. 7-1-01; OSU 6-2002, f. 6-5-02, cert. ef. 7-1-02; OSU 1-2003, f. 6-19-03, cert. ef. 7-1-03; OSU 1-2004, f. 6-23-04, cert. ef. 7-1-04; OSU 1-2005, f. 6-13-05, cert. ef. 7-1-05; OSU 1-2006, f. 6-23-06, cert. ef. 7-1-06; OSU 1-2007, f. 6-18-07, cert. ef. 7-1-07; OSU 3-2008, f. 6-27-08, cert. ef. 7-1-08; OSU 2-2009, f. 6-16-09, cert. ef. 7-1-09; OSU 1-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Amend OSU’s Student Conduct Code.

Adm. Order No.: OSU 2-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 5-1-2010

Rules Adopted: 576-015-0021

Rules Amended: 576-015-0005, 576-015-0010, 576-015-0020, 576-015-0025, 576-015-0030, 576-015-0035, 576-015-0040, 576-015-0043, 576-015-0045, 576-015-0050, 576-015-0055, 576-015-0056, 576-015-0057, 576-015-0060

Rules Repealed: 576-015-0015

Subject: OSU is amending its Student Conduct Code to add and clarify the student conduct that may warrant disciplinary action by the University and the sanctions that may be imposed for such conduct. The amendments address specific areas of concern including cases of stalking, harassment, computer misuse, hazing and violations made possible by advances in technology. The amendments also make minor changes and clarifications to the process by which discipline is imposed.

Rules Coordinator: Barbara Melton—(541) 737-6262

576-015-0005

Purpose

(1) The primary purpose of the Student Conduct Code is to establish community standards and procedures necessary to maintain and protect an environment conducive to learning, in keeping with the educational objectives of Oregon State University. This code is based on the assumption that all persons must treat one another with dignity and respect in order for scholarship to thrive.

(2) Students are also expected to follow the academic and professional standards of the academic units.

(3) Choosing to join the Oregon State University community obligates each member to a code of responsible behavior. Individuals and Student Organizations are expected to observe the policies, rules, and requirements of Oregon State University as well as laws of municipalities and counties, the State of Oregon, the United States of America and, when in another country, that country.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0010

Definitions

(1) A “Student” includes all persons enrolled at the University and/or any or all dual-enrolled campuses pursuing undergraduate, graduate, or professional studies. It further includes persons who are eligible to receive any of the rights and privileges afforded a person who is enrolled at the University including, but not limited to, those individuals admitted to the University and attending orientation programs, and those individuals enrolled in any special non-credit programs approved by the University. A “Student” may be currently registered, or may have been enrolled in a previous term, or may be registered for a future term, or may be admitted but not yet enrolled.

(2) A “Student Organization” includes any group of students living or acting together, or electing officers, or assessing dues or fees for their mutual benefit, or which has registered with the University, or is affiliated with an academic unit.

(3) An “Individual Violation” is a violation of the Student Conduct Code committed by an individual Student acting alone or in concert with other individual(s) independent of a Student Organization or its activities and events.

(4) An “Organization Violation” is a violation of the Student Conduct Code committed by a Student Organization.

(5) “SCCS” is the office of Student Conduct and Community Standards.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 1-2001, f. & cert. ef. 2-21-01; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0020

Offenses Proscribed by the University

A Student or Student Organization found to have committed any of the following proscribed acts is subject to sanctions under these rules:

(1) Obstruction or disruption of teaching, learning, research, administration, disciplinary procedures, or other institutional activities, including the institution’s public service functions or other authorized activities on institutionally-owned or controlled property. Disruptive behavior may include but is not limited to the following, where it has the effect of obstructing or disrupting the University activities listed above:

(a) Repeatedly leaving and entering the classroom without authorization;

(b) Making loud or distracting noises;

(c) Arriving late or leaving early;

(d) Persisting in speaking without being recognized;

(e) Behavior that would cause a reasonable person to fear for his or her safety.

(2) The instructor has authority to manage the classroom environment, which may include requiring a Student to leave when the Student’s behavior disrupts the teaching or learning environment. If the Student refuses to leave, the instructor may call the Department of Public Safety for assistance and should submit an Incident Report Form to SCCS to initiate disciplinary proceedings.

(3) Academic or Scholarly Dishonesty:

(a) Academic or Scholarly Dishonesty is defined as an act of deception in which a Student seeks to claim credit for the work or effort of another person, or uses unauthorized materials or fabricated information in any academic work or research, either through the Student’s own efforts or the efforts of another.

(b) It includes:

(A) **CHEATING** — use or attempted use of unauthorized materials, information or study aids, or an act of deceit by which a Student attempts to misrepresent mastery of academic effort or information. This includes but is not limited to unauthorized copying or collaboration on a test or assignment, using prohibited materials and texts, any misuse of an electronic device, or using any deceptive means to gain academic credit.

(B) **FABRICATION** — falsification or invention of any information including but not limited to falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.

(C) **ASSISTING** — helping another commit an act of academic dishonesty. This includes but is not limited to paying or bribing someone to acquire a test or assignment, changing someone’s grades or academic records, taking a test/doing an assignment for someone else by any means, including misuse of an electronic device. It is a violation of Oregon state

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law to create and offer to sell part or all of an educational assignment to another person (ORS 165.114).

(D) **TAMPERING** — altering or interfering with evaluation instruments or documents.

(E) **PLAGIARISM** — representing the words or ideas of another person or presenting someone else's words, ideas, artistry or data as one's own, or using one's own previously submitted work. Plagiarism includes but is not limited to copying another person's work (including unpublished material) without appropriate referencing, presenting someone else's opinions and theories as one's own, or working jointly on a project and then submitting it as one's own.

(c) Academic Dishonesty cases are handled initially by the academic units, following the process outlined in the University's Academic Dishonesty Report Form, and will also be referred to SCCS for action under these rules.

(4) Obstruction or disruption that interferes with freedom of movement, either pedestrian or vehicular, on institutionally-owned or controlled property.

(5) Hazing, defined as any action that endangers the physical, emotional, mental health or safety of an individual, or destroys or damages personal property for the purpose of initiation, membership, admission or participation in a group or organization. Expressed or implied consent of the person subject to hazing is not a defense. Apathy and acquiescence in the presence of hazing are not neutral acts; they are violations of this rule. Acts that constitute hazing when they endanger the physical, emotional, mental health or safety of an individual, or destroy or damage personal property, include but are not limited to:

(a) Acts that are prohibited under any applicable law, including but not limited to ORS 163.197, under which hazing is a criminal violation;

(b) Interfering with a Student's academic performance by denying sufficient time for class, study or other academic activities;

(c) Compelling ingestion of any substance;

(d) Compelling participation in physical activities such as calisthenics, exercise, or other games or activities requiring physical exertion;

(e) Compelling exposure to weather elements or other physically or emotionally uncomfortable situations;

(f) Compelling excessive fatigue from sleep deprivation, physical activities, or exercise;

(g) Committing any act of physical brutality against another including but not limited to paddling, striking with fists, open hands or objects, and branding;

(h) Kidnapping or transporting another with the intent of stranding him or her;

(i) Compelling conduct that can be reasonably expected to embarrass or adversely affect the dignity of another, including the performance of public stunts and activities such as scavenger hunts;

(j) Intentionally creating work or labor for another;

(k) Compelling another to commit any sexual act or engage in lewd behavior;

(l) Compelling any act that results in the destruction, defacement or removal of private or public property

(6) Harassment, defined as conduct of any sort directed at another that is severe, pervasive or persistent, and is of a nature that would cause a reasonable person in the victim's position substantial emotional distress and undermine his or her ability to work, study or participate in his or her regular life activities or participate in the activities of the University, and actually does cause the victim substantial emotional distress and undermines the victim's ability to work, study, or participate in the victim's regular life activities or participate in the activities of the University. Stalking behavior that meets this definition constitutes Harassment within the meaning of this rule.

(7) Sexual Harassment, as defined in the University's Policy on Sexual Harassment.

(8) Discriminatory Harassment, as defined in the University's Policy on Discriminatory Harassment.

(9) Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on institutionally-owned or controlled property, in contravention of law or institutional rules.

(10) Illegal use, possession, or distribution of drugs or illegal substances on institutionally-owned or controlled property.

(11) Alcohol violations, including possession or consumption of alcohol by persons less than 21 years of age, furnishing alcohol to persons less than 21 years, or consumption of alcohol by a Student of any age in violation of the University's rules or policies on alcoholic beverages on

University owned or controlled property or at University sponsored or supervised activities.

(12) Rape, sexual assault, or unwanted sexual contact of any kind, and the threat of such contact, are prohibited, as is any physical abuse. Sexual contact shall be considered "unwanted" or without consent if no clear consent is freely given; if inflicted through force, threat of force, or coercion; or if inflicted upon a person who is unconscious or otherwise without the physical or mental capacity to consent. If sexual contact is inflicted on someone who is intoxicated or impaired in the exercise of their judgment by alcohol or drugs, it may be considered without consent.

(13) Detention or physical abuse of any person or conduct that threatens imminent bodily harm or endangers the health of any person on any institutionally-owned or controlled property.

(14) Invasion of another's privacy, where that person has a reasonable expectation of privacy, including but not limited to the use of electronic devices to make an unauthorized audio or video recording of any person while on University owned or controlled property without his or her prior knowledge, or without his or her effective consent, when such a recording is of information or of images taken from or of a person at a time and place where she or he has a reasonable expectation of privacy and where the recording is reasonably likely to cause injury or distress.

(15) Unauthorized recording of a class or of organizational or University meetings. To obtain the required authorization, the Student or Student Organization must obtain expressed permission from the faculty member, Student Organization, or University representative or official in charge of the class, meeting, or activity.

(16) Malicious damage, misuse or theft of institutional property, or the property of any other person where such property is located on institutionally-owned or controlled property or, regardless of location, is in the care, custody, or control of an institution.

(17) Refusal by any person while on institutional property to comply with an order of the President or appropriate authorized official to leave such premises because of conduct proscribed by this rule when such conduct constitutes a danger to personal safety, property, or educational or other appropriate institutional activities on such premises.

(18) Unauthorized entry to or use of institutional facilities, including buildings and grounds.

(19) Smoking in unauthorized areas in violation of OAR 576-040-0010.

(20) Falsification or misuse of University information, including but not limited to records, permits, documents, computer resources, identification cards, etc.; or the furnishing of false or misleading information to the University or its representative; or refusal to provide one's name, class, school, and local address when requested by a University official, provided the official is identified and indicates legitimate reason for the request.

(21) Unauthorized use of University computing resources in violation of the University's Acceptable Use of Computing Resources Policy.

(22) Inciting others to engage in any of the conduct or to perform any of the acts prohibited herein. Inciting means that advocacy of proscribed conduct which calls on the person or persons addressed for imminent action, and is coupled with a reasonable apprehension of imminent danger to the functions and purposes of the institution, including the safety of persons and the protection of its property.

(23) Violating the State Board of Higher Education's Policy on Intercollegiate Athletics as described in Section 8 of its Internal Management Directives, specifically including the subsection thereof entitled Code of Ethics.

(24) Violation of any federal or state law or city or local ordinance or University rule or policy that applies to the Student.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 8-1995, f. & cert. ef. 12-29-95; OSU 4-1996, f. & cert. ef. 6-21-96; OSU 4-1998, f. & cert. ef. 6-24-98; OSU 4-1999, f. & cert. ef. 7-17-99; OSU 2-2002, f. & cert. ef. 2-25-02; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0021

Violations of the Student Conduct Code by Student Organizations

When members of a Student Organization act together in a way that violates the Student Conduct Code, the Student Organization is expected to hold itself accountable.

(1) When a potential Organization Violation of the Student Conduct Code occurs, SCCS may review the incident to determine the appropriate process for resolution. Generally, the University will expect a Student Organization to hold itself accountable for the acts of its members when those acts are related to the Student Organization's activities.

(a) The Student Organization or its governing body will notify SCCS and keep it informed at all stages of the process.

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(b) The University, through SCCS, reserves the right to take immediate jurisdiction at its discretion. The Student Organization or governing body may still hold its members accountable in the situation, but must do so in conjunction with SCCS.

(2) If a person affected by the alleged violation is not satisfied with the action taken by the Student Organization, that person may file a grievance with the appropriate governing body or, if none exists, with SCCS.

(3) If, in the judgment of the Director of SCCS, sufficient action is not taken in a timely manner by the Student Organization, the case will be reviewed for possible action by SCCS.

(4) In deciding whether the Student Organization is responsible for the violation, the University will consider whether one or more of the following factors are present:

(a) The violation arises out of an event sponsored, organized, financed, or endorsed by the Student Organization;

(b) The violation occurs on premises owned or controlled by the Student Organization;

(c) The leadership of the Student Organization had knowledge, or should have had knowledge, of the likelihood that a violation would occur and failed to take corrective action; or

(d) A pattern of individual violations is found to have existed without proper and appropriate group control, remedy, or sanction.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0025

Jurisdiction

The Student Conduct Code shall apply to a Student's or Student Organization's conduct that occurs on University premises, at University sponsored or affiliated activities regardless of location, and to off campus conduct that adversely affects the University community or the pursuit of University objectives. These standards shall apply to a Student's conduct even if the Student withdraws from school while a disciplinary matter is pending. Examples of behavior that adversely impacts the University community may include but are not limited to physical or sexual assault, rape, hazing, harassment, stalking, furnishing alcohol to minors, distribution of drugs or illegal substances, or illegal weapons use. The University has sole discretion to determine what conduct occurring off campus adversely impacts the University community and/or the pursuit of University objectives.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 8-1995, f. & cert. ef. 12-29-95; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0030

Sanctions

The University utilizes an educational and restorative sanctioning model. The sanction applied will be commensurate with the violation committed and become progressively more demanding or severe if the Student or Student Organization repeats violations, demonstrating that learning has not taken place. An accumulation of a variety of violations may result in severe sanctions such as deferred suspension, suspension, and expulsion. Violations that affect the health, safety and well being of the community are deemed the most severe and may result, upon the first violation, in a suspension or expulsion. Students or Student Organizations exhibiting behavior that violates any part of the Student Conduct Code are subject to one or more of the following:

(1) Warning: Official notice to a Student or Student Organization exhibiting behavior that violates any part of the Student Conduct Code. The continuation of such behavior may result in further conduct action.

(2) Required Educational Activities: Mandatory participation in educational activities. Such Education Activities include but are not limited to completion of a report or attendance at a seminar or other educational program or presentation.

(3) University/Community Service Work Hours: A Student or Student Organization is required to complete a specified number of hours of service to the University or general Community.

(4) Behavior Expectations Agreement: A contract between the University and the Student outlining specific behavior expectations.

(5) Restitution: The Student or Student Organization is required to provide reimbursement by dollar amount, by transfer of property, or by provision of services to the University or a member of the University community in accordance with the nature of the violation and in an amount not in excess of actual expenses, damages, or losses incurred.

(6) Restrictions: Removal from a Student Organization, denial of entry to specific University facilities or other restrictions consistent with the violation committed. For a Student Organization, restrictions may include denial of specific University privileges including but not limited to sponsored social activities, sponsored parties or philanthropy, participation in intramurals, representing the University and any travel in connection with such representation, recruitment, membership or representation on a governing council, use of space for a meeting or event on campus, participation in competition and events, and receipt of institutional funding.

(7) No Contact Order: A No Contact Order is a directive to a Student or Students to refrain from any intentional contact, direct or indirect, with one or more designated persons through any means including personal contact, e-mail, telephone, or third parties.

(8) Academic Sanction: Students whose behavior is found to constitute Academic or Scholarly Dishonesty as defined in OAR 576-015-0020(2) are subject to additional academic sanctions, which may include but are not limited to failing the course, removal from an academic department, or removal from a college. Academic sanctions are imposed by the instructor, department chair or dean and are noted on the Academic Dishonesty Report Form in accordance with Academic Regulation 15.

(9) Removal from a Class: A Student's removal from a class may be temporary or permanent. Permanent removal from a class may be authorized by the Director of SCCS with concurrence from the Dean of the College in which the class is offered. A Student who is permanently removed from a class will receive a "W" (Withdrawal) on the academic transcript. No refunds for tuition or other class fees will be made.

(10) Conduct Probation: Placement on probationary status during which there is observation and review of behavior and the Student or Student Organization must demonstrate compliance with the Student Conduct Code. Terms of the Conduct Probation will be determined at the time the probation is imposed and may include additional sanctions including but not limited to loss of privileges, restrictions, restitution, and/or required educational activities.

(11) Conduct Suspension:

(a) Deferred Suspension: Placement on deferred suspension status during which there is observation and review of behavior. If the Student or Student Organization is found to further violate the Student Conduct Code during this period then the Student/Student Organization is suspended without further hearings. Deferred Suspension may be for a period of one term up to and including the remainder of a Student's enrollment at the University; Deferred Suspension for a Student Organization is generally for one year but may be up to three years.

(b) Suspension:

(A) Student — Exclusion from the University and all University property for a specified period of time. The Department of Public Safety will exclude the Student from OSU campus upon Suspension. Suspended Students are denied the privileges and services provided to currently enrolled Students, including residing in University-owned or recognized Student housing, attending class, or using other University services or facilities. Suspension is generally for one year, however the period of Suspension may be specified for any period of time;

(B) Student Organization — Loss of University recognition or registration for a specified period of time. The Organization must comply with all sanctions prior to being registered or recognized again. While a Student Organization is suspended it may not use University resources;

(C) The conditions of Suspension take effect immediately after the Student or Student Organization has been informed of the decision. If an appeal is filed, the imposition of the Suspension will be delayed until the conclusion of the appeal process. However, if a pending conduct hearing or appeal may result in Suspension as determined by the Director of SCCS, awarding of a Student's academic degree will be postponed pending the outcome of the conduct hearing.

(12) Expulsion: Permanent Conduct Suspension.

(13) Degree Revocation.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 1-1993, f. & cert. ef. 5-7-93; OSU 1-2001, f. & cert. ef. 2-21-01; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0035

Readmission After Suspension

A Student suspended for misconduct and wishing to return to the University after the suspension period must notify the Director of SCCS in writing. The notification should include a description of the Student's activities since the suspension went into effect. If the Director of SCCS certifies

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that the terms of suspension have been met, the Student may apply for readmission through the regular process.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 4-1998, f. & cert. ef. 6-24-98; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0040

Record

(1) All Student Conduct Code violations incurring sanctions include the creation of a conduct record. Sanctions at the level of Conduct Probation and above place the Student or Student Organization outside of "good standing" with the University for the duration of the sanction. Multiple sanctions may be imposed where appropriate.

(2) Suspension or expulsion will be noted in a Student's general academic record within the Registrar's Office by means of a Conduct Action Form which indicates the reason for the Suspension. The suspended Student may include in the record an explanation for the action taken by the University. As stipulated in OAR-166-475-0110(38), case files involving Expulsion or Degree Revocation are retained for 75 years; case files involving Suspension are retained for 10 years; all other conduct case files are retained for 5 years.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 4-1998, f. & cert. ef. 6-24-98; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0043

Notice

(1) Upon receiving a complaint or report that a Student or Student Organization may have violated the Student Conduct Code, the Director of SCCS will notify the Student/Student Organization in writing of the alleged violation(s). The notice will inform the Student or Student Organization of the rule(s) said to have been violated and a description of the acts or omissions alleged to have been in violation of the Student Conduct Code.

(2) If the Director of SCCS determines the alleged violation(s) may result in Suspension or Expulsion, the notice described in subsection (1) will set a time and place for a SCCS Committee hearing. The period of time between the hearing date and the accused Student's or Student Organization's receipt of the notice must be at least 72 hours. The Director of SCCS will notify the Student/Student Organization that the SCCS Committee Hearing may be waived and, in its place, the case heard by the Director of SCCS or designee.

(3) If there is an allegation of academic dishonesty as defined in OAR 576-015-0020(2), the Director of SCCS will determine what conduct proceeding is appropriate. If there is a record of a previous incident of academic dishonesty, the Director of SCCS will send written notice to the Student of a SCCS Committee hearing, as described in subsections (1) and (2) of this rule, and OAR 576-015-0050.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1998, f. & cert. ef. 6-24-98; OSU 1-2001, f. & cert. ef. 2-21-01; OSU 2-2002, f. & cert. ef. 2-25-02; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0045

Determination by the Director of Student Conduct and Community Standards

(1) If the Student or Student Organization elects to have the case heard by the Director of SCCS or designee, the Student/Student Organization will be informed of the evidence of the violation(s) and will be given an opportunity to explain the behavior. The Student/Student Organization may bring any third party advisor to any meetings so long as the availability of the advisor does not hamper the timeliness of the hearing. The Student/Student Organization will be expected to speak for him/herself or themselves at all times.

(2) If the Student or Student Organization fails to meet with the Director of SCCS or designee, the Director may take conduct action in the Student's/Student Organization's absence.

(3) The accused Student or Student Organization will be informed orally or in writing of the decision and will be informed of the right to appeal to the Vice Provost for Student Affairs, pursuant to OAR 576-015-0060.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 8-1995, f. & cert. ef. 12-29-95; OSU 4-1998, f. & cert. ef. 6-24-98; OSU 1-2001, f. & cert. ef. 2-21-01; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0050

Student Conduct and Community Standards (SCCS) Committee Hearing

(1) When an SCCS Committee hearing is called, the accused Student or Student Organization will appear before a panel of up to five faculty or staff and five students appointed by the Vice Provost for Student Affairs and the Associated Students of Oregon State University, respectively. The Bylaws of the SCCS Committee are available from the Vice Provost for Student Affairs or the SCCS office.

(2) All SCCS Committee hearings are closed and information presented along with all supporting documents is confidential. The hearing is informal and does not follow administrative contested case or courtroom procedures.

(3) If the Student or Student Organization has been properly notified and fails to appear, the SCCS Committee may proceed with the hearing and conduct action may be taken.

(4) During the hearing, the accused Student or Student Organization may be accompanied by an advisor of the Student's/Student Organization's choice. The advisor may be a faculty or staff member, fellow Student, parent, or any person of the Student's/Student Organization's choice so long as the availability of the advisor does not hamper the timeliness of the hearing. The Student/Student Organization may choose to have an attorney serve as advisor, however the advisor does not represent the Student/Student Organization in a conduct hearing and the Student/Student Organization will be expected to speak for him/herself or themselves at all times.

(5) During the hearing, the Student or Student Organization has the opportunity to offer information and testimony on his/her/its own behalf. The Student/Student Organization also has the opportunity to review and respond to all information, statements, or evidence presented.

(6) The chairperson of the SCCS Committee, or designee, will decide any questions or objections to hearing procedures that are raised during the hearing.

(7) Members of the Committee may ask questions of any person present during the hearing and the chairperson will invite questions and comments from the accused Student/Student Organization and the victim-claimant if present. The chairperson may also invite questions or comments from advisors or others present. If the chairperson decides an essential person or piece of information is missing, the chairperson may decide to reconvene the hearing at the earliest practical time that the missing information will be available.

(8) After the chairperson has determined that all necessary information has been presented and questions answered, the Committee will go into executive session and all other persons will be excused. The Committee will determine, based on a preponderance of the evidence, whether or not it believes the accused Student/Student Organization is responsible for a violation of the Conduct Code and, if so, the Committee will reconvene with the accused Student/Student Organization and a representative of SCCS to consider what sanctions may be appropriate. The accused Student/Student Organization may waive his/her/their right to be present. The Committee may consider:

(a) Evidence of any mitigating circumstances presented by the Student/Student Organization; and

(b) Other relevant information, including but not limited to, evidence of prior violations of the Student Conduct Code presented by a representative of SCCS.

(9) The Committee will again go into executive session to make a decision about appropriate sanctions. The time between the conclusion of the hearing and the delivery of the recommendation to the Director of SCCS shall be no more than three days, excluding weekends and holidays. The Committee's decision will be in the form of a written recommendation to the Director of SCCS.

(10) In cases of Academic or Scholarly Dishonesty or the reported misbehavior of an academic department Student Organization, the Committee shall make a recommendation within three days to the Associate Vice Provost for Academic Affairs, or designee, who shall make the decision. The accused Student/Student Organization will be sent a letter describing the decision and any University expectations or actions taken.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 8-1995, f. & cert. ef. 12-29-95; OSU 4-1998, f. & cert. ef. 6-24-98; OSU 1-2001, f. & cert. ef. 2-21-01; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

ADMINISTRATIVE RULES

576-015-0055

Hearing Officer(s) Contingency

If the Vice Provost for Student Affairs or designee believes it is necessary, in order to schedule a timely hearing or because of a potential conflict of interest that might affect the ability of the SCCS Committee to conduct a fair hearing, he or she may appoint a hearing officer or officers to act in place of the SCCS Committee. The hearing officer(s) may be a faculty member or a professional from outside the University. The hearing officer(s) shall hear the case in accordance with these rules and shall recommend to the Director of SCCS appropriate action in each case.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 8-1995, f. & cert. ef. 12-29-95; OSU 4-1998, f. & cert. ef. 6-24-98; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0056

Emergency Action

(1) The Director of SCCS or designee may take emergency action when necessary to secure the health or safety of other persons, or the Student against whom the action is taken (the accused Student) and there is an alleged violation of the Student Conduct Code.

(2) Emergency Action includes but is not limited to:

(a) Immediate Suspension from the University;

(b) Restriction of the accused Student's presence on University property and/or at University events.

(3) At the time that the Emergency Action takes place, the Director of SCCS or designee shall:

(a) Inform the accused Student of the reason for the Emergency Action;

(b) Give the accused Student the opportunity to explain why an Emergency Action need not be taken;

(c) Inform the accused Student that a preliminary hearing will take place according to section (4) of this rule, and that the accused Student will be informed of its time, place and date.

(4) The preliminary hearing shall take place within two business days of the Emergency Action. At this hearing the accused Student shall have a full opportunity to demonstrate to the Director of SCCS that none of the conditions specified in section (1) of this rule apply. As with other proceedings, the accused Student may be accompanied by an advisor, but must speak for him/herself at all times.

(5) Based on the reasonable evaluation of the evidence presented at the preliminary hearing, the Director of SCCS shall notify the accused Student within 24 hours of the decision to:

(a) Dissolve the Emergency Action and take no further action; or

(b) Dissolve the Emergency Action but proceed to a full hearing regarding the accused Student's behavior as prescribed in the Student Conduct Code; or

(c) Sustain the Emergency Action until such time as a formal hearing regarding the accused Student's conduct may be held, but not to exceed two weeks.

(6) Formal hearings subsequent to an Emergency Action shall occur no later than ten (10) business days after the preliminary hearing and shall be administered pursuant to OAR 576-015-0050 to 576-015-0055.

(7) If the Student Conduct Committee or a hearing officer recommends that the restriction on the accused Student's housing or enrollment be removed, the Student will not be assessed fees for reinstatement.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-2001, f. & cert. ef. 2-21-01; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0057

Notice of Decision and Rights of Victim

(1) The University will make an effort to consider the rights and needs of the victim, if there is one, in decisions related to restitution or other sanctions.

(2) If any sanction beyond a verbal warning is imposed after a conduct hearing, the accused Student will be given or sent a letter confirming the decision and University expectations.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 4-1998, f. & cert. ef. 6-24-98; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

576-015-0060

Conduct Action Appeals

(1) Appeals of the decision of the Director of SCCS shall be made to the Vice Provost for Student Affairs whose decision is final. In appeals concerning Academic or Scholarly Dishonesty, the Vice Provost for Student

Affairs will confer with the Vice Provost for Academic Affairs and International programs or designee before the decision is made.

(2) Appeals must be in writing and filed with the Vice Provost for Student Affairs within 15 calendar days following the date the action is taken.

(3) The request for an appeal must include specific justification, including: errors, failure to consider all of the evidence presented, or any other action, including any new evidence not known at the time of the original hearing, which denied the Student a fair hearing.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSU 1-1991, f. & cert. ef. 3-6-91; OSU 1-1993, f. & cert. ef. 5-7-93; OSU 8-1995, f. & cert. ef. 12-29-95; OSU 4-1998, f. & cert. ef. 6-24-98; OSU 1-2001, f. & cert. ef. 2-21-01; OSU 2-2010, f. 6-30-10, cert. ef. 7-1-10

Rule Caption: Repeal Student Organization rules and rely on OSU policy statements in their place.

Adm. Order No.: OSU 3-2010

Filed with Sec. of State: 6-30-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 5-1-2010

Rules Repealed: 576-018-0000, 576-018-0010, 576-018-0020, 576-018-0030, 576-018-0040, 576-018-0050, 576-018-0060, 576-018-0070, 576-018-0080, 576-018-0090, 576-018-0100, 576-018-0110, 576-018-0120, 576-018-0130, 576-018-0140, 576-018-0150, 576-018-0160, 576-018-0170, 576-018-0180, 576-018-0190, 576-018-0200, 576-018-0220, 576-018-0230, 576-018-0240, 576-018-0250, 576-018-0260

Subject: OSU has in place a set of administrative rules governing university student organizations. See OAR 576-018-0000 et seq. Internal University matter, however, are generally more appropriately governed by University policies, rather than administrative rules. In recognition of the fact that these rules govern internal University matters, OSU proposed to repeal the OAR 576-018-000 et seq administrative rules and replace them with OSU policies currently under development and to be adopted approximately simultaneously with this proposed repeal.

Rules Coordinator: Barbara Melton—(541) 737-6262

Oregon University System, Portland State University Chapter 577

Rule Caption: Amends Portland State University's Schedule of Fines & Fees for General Services and other charges.

Adm. Order No.: PSU 2-2010

Filed with Sec. of State: 6-16-2010

Certified to be Effective: 8-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 577-060-0020

Rules Repealed: 577-060-0020(T)

Subject: This amendments establishes updated fees, charges, fines, and deposits for General Service for the 2010–2011 Fiscal year. It is in the interest of the general public for the State of Oregon that certain University services are self-sustaining. The amendment to this rule will permit the University to recover in fees the cost of providing various administrative and academic services.

Rules Coordinator: Julie Osborn—(503) 725-3701

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 2010–2011 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,

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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

**Oregon University System,
Southern Oregon University
Chapter 573**

Rule Caption: Special Fees.

Adm. Order No.: SOU 4-2010

Filed with Sec. of State: 7-12-2010

Certified to be Effective: 7-12-10

Notice Publication Date: 3-1-2010

Rules Amended: 573-040-0005

Subject: The proposed rule amends rules that eliminate fees that are no longer necessary and establish, increase, or decrease fees to more accurately reflect the actual costs of instruction for certain courses and special services not otherwise funded through the institution's operating budget.

Rules Coordinator: Treasa Sprague—(541) 552-6319

573-040-0005

Special Fees

The Special Fees for certain courses and general services approved by Southern Oregon University are hereby adopted by reference.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & OAR 580-040-0010

Hist.: SOHC 4, f. & cert. ef. 9-2-76; SOHC 10, f. & cert. ef. 5-9-77; SOHC 6-1978, f. & cert. ef. 6-2-77; SOHC 8-1978, f. & cert. ef. 12-15-78; SOHC 2-1979, f. & cert. ef. 6-20-79; SOHC 4-1980, f. & cert. ef. 5-20-80; SOHC 4-1980, f. & cert. ef. 5-20-80; SOHC 2-1981, f. & cert. ef. 6-2-81; SOHC 3-1982, f. & cert. ef. 7-1-82; SOHC 4-1983, f. & cert. ef. 5-26-83; SOHC 1-1984, f. & cert. ef. 6-20-84; SOHC 4-1985, f. & cert. ef. 6-3-85; SOHC 9-1985, f. & cert. ef. 12-17-85; SOHC 2-1986, f. & cert. ef. 5-30-86; SOHC 1-1987, f. & cert. ef. 6-5-87; SOHC 4-1987, f. & cert. ef. 9-4-87; SOHC 1-1988, f. & cert. ef. 5-19-88; SOHC 2-1988(Temp), f. & cert. ef. 9-2-88; SOHC 4-1988, f. & cert. ef. 11-23-88; SOHC 3-1989, f. & cert. ef. 6-1-89; SOHC 3-1990, f. & cert. ef. 5-31-90; SOHC 3-1991, f. & cert. ef. 5-30-91; SOHC 1-1992, f. & cert. ef. 6-3-92; SOHC 3-1993, f. & cert. ef. 5-21-93; SOHC 2-1994, f. & cert. ef. 6-10-94; SOHC 1-1995, f. & cert. ef. 6-7-95; SOHC 1-1996, f. & cert. ef. 6-5-96; SOU 1-1997, f. & cert. ef. 5-20-97; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 2-1999, f. & cert. ef. 5-7-99; SOU 1-2000, f. & cert. ef. 4-10-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2002, f. & cert. ef. 4-11-02; SOU 1-2003, f. & cert. ef. 4-16-03; SOU 1-2004, f. & cert. ef. 4-5-04; SOU 1-2005, f. & cert. ef. 4-11-05; SOU 1-2006, f. & cert. ef. 3-31-06; SOU 1-2007, f. & cert. ef. 4-25-07; SOU 4-2008, f. 4-9-08, cert. ef. 4-15-08; SOU 1-2009, f. 6-4-09, cert. ef. 6-15-09; SOU 4-2010, f. & cert. ef. 7-12-10

**Parks and Recreation Department
Chapter 736**

Rule Caption: Rules governing Owyhee River Scenic Waterway amended to mirror Federal public use regulations.

Adm. Order No.: PRD 8-2010

Filed with Sec. of State: 6-16-2010

Certified to be Effective: 6-16-10

Notice Publication Date: 1-1-2010

Rules Amended: 736-040-0055

Subject: The rule governing public use of the Owyhee River Scenic Waterway is being amended to mirror Federal public use regulations for uniform enforcement. The rules will include OPRD's policy for public use of the Owyhee River Scenic Waterway, provide definitions of terms, and set clear guidelines relative to: (1) boating and registration; (2) campfires, fuel, firepans, and smoking; (3) camping; and (4) litter and personal sanitation.

Rules Coordinator: Vanessa DeMoe—(503) 986-0719

736-040-0055

Owyhee River Scenic Waterway

Natural River Area:

(1) The entire Owyhee River Scenic Waterway, in its two segments, is classified as a Natural River Area.

(2) In order to preserve the river and related adjacent lands in an essentially primitive condition, no new structures or improvements which are visible from the river, other than those erected or made in connection with the existing agricultural uses, or those needed for public outdoor recreation or for resource protection will be permitted. Commercial public service facilities, including resorts and motels, lodges and trailer parks, and additional dwellings which are visible from the river will not be permitted.

(3) Public Use of the Owyhee River Scenic Waterway

(a) Policy: The Commission finds that it is necessary to adopt rules for public recreation use of the lands and waters within this scenic waterway area in order to protect and enhance the Owyhee River Scenic Waterway's unique aesthetic, scenic, fish and wildlife, scientific and recreational features, and because these outstanding and unique features caused the people of Oregon to designate these river segments as a scenic waterway. The Commission bases this rule upon 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 provisions of ORS 390.845, person using the Owyhee River Scenic Waterway for recreation purposes shall comply with this rule. Where more restrictive or specific than the general rules of this division, this rule will prevail over the general rules.

(b) Definitions: For purposes of this rule, the following definitions apply:

(A) "Approved portable toilet" means any non-biodegradable, reusable, rigid, durable container designed to receive and hold human waste, in any container position without leaking, large enough to service the entire party for the length of the trip, 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, without spills, seepage or human exposure to human waste; or at least one WAG bag manufactured by Phillips Environmental Products or other similar approved product, for each person in the boating party, carried in a leak-proof container and disposed of in a trash receptacle according to manufacturer instructions, without spills, seepage or human exposure to human waste.

(B) "Boat" means every watercraft or device used as a means of transport on the water.

(C) "Camping" means erecting a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material, parking a motor vehicle, motor home or trailer, or mooring of a vessel, or other action for the apparent purpose of overnight occupancy.

(D) "Designated Campsite" means a public designated campsite within a developed campground, marked with a visible number painted on a picnic table or mounted on a post or placard.

(E) "Developed Toilet Facility" means a vault type toilet provided by the Bureau of Land Management or the department.

(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) "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.

(H) "Group Size Limit" means a boating party not to exceed 15 persons between the Idaho state line to Three Forks, and not to exceed 20 persons between Crooked Creek to Birch Creek regardless of the number of persons covered by each boater registration form.

(I) "Owyhee River Scenic Waterway" means that portion of the Owyhee River designated in ORS 390.826(15) as a State Scenic Waterway. The portion of the Owyhee River Scenic Waterway affected by this rule covers the section of the South Fork Owyhee River from the Idaho border downstream to Three Forks, and the mainstem Owyhee River from Crooked Creek downstream to Leslie Gulch. The Owyhee River Scenic Waterway also includes all water and lands within one-quarter mile of the bank on either side of the river.

(J) "Refuse" includes, but is not limited to, wastewater, sewage, litter, trash, garbage, scraps, remnants of water balloons or clay pigeons, remnants of a campfire including charcoal, ash, or burned debris, or other useless or worthless parts of things.

(K) "Remain Overnight" means human presence in the Owyhee 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.

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(L) "Trip Leader" means a person who completes and signs an Owyhee River Boater Registration Form on behalf of a boating group. By signing the boater registration form, the group leader accepts legal responsibility for the leader's and group members' compliance with all applicable Department, Oregon State Marine Board, and Oregon Liquor Control Commission administrative rules; controlled substance, juvenile and criminal laws; and this rule.

(c) Boating and Registration:

(A) All boats shall carry at least one United States Coast Guard approved personal flotation device in good and serviceable condition for each person on board. Each device shall be of an appropriate size for the person for whom it is intended and shall be readily accessible whenever the boat is in use. As used in this paragraph, a personal flotation device is not "readily accessible" if it is stowed in a locked compartment or locker or is otherwise not immediately, physically available to persons on board the boat in case of an emergency.

(B) Every boater or boating group shall register their party and trip prior to launching. The boater or trip leader must completely and accurately provide all information requested on the registration form and must sign the registration form prior to launch in order to be valid.

(C) Every boater or boating group shall abide by the requirements of the registration form stipulations.

(D) The boater or group leader must carry their valid registration and it must be readily available for inspection upon request by authorized agency and law enforcement personnel.

(d) Campfires, Fuel, Firepans and Smoking:

(A) When fire is not prohibited, a person must contain fire 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) A person may use commercially manufactured metal camp stoves and lanterns for outdoor use only when fueled with bottled liquefied petroleum gas (e.g. propane) or liquid gas. A person must operate such stove or lanterns 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) A person must completely extinguish all fires after use. A person must take the extinguished remains, including all ash, wood or charcoal residues, partially consumed briquettes, and burned refuse out of the scenic waterway for disposal or deposit in a proper garbage receptacle provided at recreation sites or litter collection stations.

(E) A person may only smoke in non-public buildings, closed vehicles, while in boats on the water or while standing in the water.

(e) Camping:

(A) Groups occupying any campsite shall not exceed either the maximum number of persons or vehicles allowed for that campsite.

(B) A person may not occupy any campsite or area posted as "Closed" to that use.

(C) A person may not possess or leave refuse, debris, or litter in an exposed, unsightly, or unsanitary condition.

(f) Litter and Personal Sanitation:

(A) All persons shall remove refuse or similar materials from of the scenic waterway for proper disposal.

(B) Boating individuals and groups that remain, intend to remain, or display intent to remain overnight within the Owyhee River Scenic Waterway must carry and use an approved portable toilet.

(C) 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.

(D) A person may not leave, deposit, or scatter human waste, toilet paper, or items used as toilet paper, on the ground within the Owyhee River Scenic Waterway.

(E) While within the Owyhee River Scenic Waterway, a person may only dump portable toilets at facilities developed and identified especially for that purpose.

Stat. Auth.: ORS 390.845(2)

Stats. Implemented: ORS 390.845(2)

Hist.: HC 1285, f. 6-27-72; PRD 8-2010, f. & cert. ef. 6-16-10

Public Utility Commission
Chapter 860

Rule Caption: In the Matter of Amendments to OAR 860-022-0041(2)(p), (2)(s)(B), and (5)(a)(B).

Adm. Order No.: PUC 3-2010

Filed with Sec. of State: 6-28-2010

Certified to be Effective: 6-28-10

Notice Publication Date: 2-1-2010

Rules Amended: 860-022-0041

Subject: The Commission adopted rules implementing SB 408 (2005) in September 2006. SB 408 requires certain public utilities to provide information about the amount of taxes paid by the utility and the amount of taxes authorized to be collected in rates during specific time periods. In auditing tax reports filed since that time, Commission Staff discovered some provisions in the implementing rules that were unclear and subject to differing interpretations, which had a significant effect on the calculation of "taxes paid" and "taxes collected" in rates. These amendments clarify those provisions.

Rules Coordinator: Diane Davis—(503) 378-4372

860-022-0041

Annual Tax Reports and Automatic Adjustment Clauses Relating to Utility Taxes

(1) This rule applies to regulated investor-owned utilities that provided electric or natural gas service to an average of 50,000 or more customers in Oregon in 2003, or to any successors in interest of those utilities that continue to be regulated investor-owned utilities.

(2) As used in this rule:

(a) "Affiliated group" has the meaning given to "affiliated group" in ORS 757.268(13)(a).

(b) "Deferred taxes" for purposes of the utility means the total deferred tax expense of regulated operations that relate to the year being reported in the utility's results of operations report or tax returns, excluding deferred taxes related to the establishment of a regulatory receivable or payable account for any rate adjustment imposed under ORS 757.268, in the year the deferred tax is established but not thereafter, to eliminate the iterative tax effect of the rate adjustment.

(c) "Income" means taxable income as determined by the applicable taxing authority, except that income means regulatory taxable income when reporting or computing the stand-alone tax liability resulting from a utility's regulated operations.

(d) "Income tax losses" means the negative taxable income of an entity in the federal taxpayer or unity group, excluding the current deduction of tax depreciation on public utility property and federal investment tax credits related to public utility property.

(e) "IRC" means Internal Revenue Code.

(f) "Investment" means capital outlays for utility property necessary or useful in providing regulated service to customers.

(g) "Iterative tax effect" means the tax effect of a rate adjustment for taxes related to ORS 757.267 or 757.268 in the tax reporting period that includes the rate adjustment.

(h) "Local taxes collected" means the total amount collected by the utility from customers under the local tax line-item of customers' bills calculated on a separate city or county basis.

(i) "Pre-tax income" means the utility's net revenues before income taxes and interest expense, as determined by the Commission in a general rate proceeding.

(j) "Properly attributed" means the share of taxes paid that is apportioned to the regulated operations of the utility as calculated in section (3), subject to subsections (4)(a), (4)(b), (4)(g), and (4)(h) of this rule.

(k) "Public utility property" means property as defined by the Code of Federal Regulations, Title 26, Section 168(i)(10).

(l) "Regulated operations of the utility" has the meaning given to "regulated operations of the utility" in ORS 757.268(13)(c).

(m) "Results of operations report" means the utility's annual results of operations report filed with the Commission.

(n) "Revenue" means utility retail revenues received from ratepayers in Oregon, excluding supplemental schedules or other revenues not included in the utility's revenue requirement and adjusted for any rate adjustment imposed under this rule.

(o) "Revenue requirement" means the total revenue the Commission authorizes a utility an opportunity to recover in rates pursuant to a general rate proceeding or other general rate revision, including an annual automatic adjustment clause under ORS 757.210.

(p) "Stand-alone tax liability" means the amount of income tax liability calculated using a pro forma tax return and revenues and expenses in the utility's results of operations report for the year, except using zero depreciation expense for public utility property, excluding any tax effects from

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investment tax credits, and calculating interest expense using actual annual average weighted cost of debt derived from the actual annual average capital structure for the tax period multiplied by the annual average rate base for the tax period.

(q) "System regulated operations" means those activities of the utility, in Oregon and other jurisdictions that are subject to rate regulation by any state commission.

(r) "Tax" has the meaning given to "tax" in ORS 757.268(13)(d).

(s) "Taxes authorized to be collected in rates" means:

(A) The following for federal and state income taxes calculated by multiplying the following three values:

(i) The revenue the utility collects, as reported in the utility's results of operations report;

(ii) The ratio of the net revenues from regulated operations of the utility to gross revenues from regulated operations of the utility, calculated using the pre-tax income and revenue the Commission authorized in establishing rates and revenue requirement; and

(iii) The effective tax rate used by the Commission in establishing rates for the time period covered by the tax report as set forth in the most recent general rate order or other order that establishes an effective tax rate, calculated as the ratio of total income tax expense in revenue requirement to pre-tax income.

(B) For purposes of paragraph (2)(s)(A) of this rule, when the Commission has authorized a change during the tax year for gross revenues, net revenues, or effective tax rate, then the amount of taxes authorized to be collected in rates will be calculated by weighting the amount of energy sold during the period that rates were in effect as a percentage of the total energy sold during the tax year.

(t) "Taxes paid" has the meaning given to "taxes paid" in ORS 757.268(13)(f).

(u) "Taxpayer" means the utility, the affiliated group or the unitary group that files income tax returns with units of government.

(v) "Tax report" means the tax filing each utility must file with the Commission annually, on or before October 15 following the year for which the filing is being made, pursuant to ORS 757.268.

(w) "Unitary group" means the utility or the group of corporations of which the utility is a member that files a consolidated state income tax return.

(x) "Units of government" means federal, state, and local taxing authorities.

(3) The amount of income taxes paid that is properly attributed to regulated operations of the utility is calculated as follows:

(a) The amount of federal income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(a)(A) and (B), subject to subsection (3)(b) of this rule:

(A) The total amount of federal income taxes paid by the federal taxpayer, to which is added:

(i) The current tax benefit, at the statutory federal income tax rate, of tax depreciation on public utility property;

(ii) The tax benefits associated with federal investment tax credits related to public utility property; and

(iii) Imputed tax benefits on charitable contributions and IRC section 45 renewable electricity production tax credits of the affiliated group, except those tax benefits or credits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales, using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the federal taxpayer in the denominator.

(b) The amount of federal income taxes paid that is properly attributed to the regulated operations of the utility under subsection (3)(a) of this rule shall not be less than the amount of the federal stand-alone tax liability calculated for the regulated operations of the utility, reduced by the product of:

(A) The imputed negative tax associated with all federal income tax losses of entities in the utility's federal taxpayer group; and

(B) The average of the ratios for the utility's gross plant, wages and salaries and sales, using amounts allocated to the regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the system regulated operations in the denominator.

(c) The total amount of state income taxes paid to units of government that is properly attributed to the regulated operations of the utility is the product of the values in paragraphs (3)(c)(A) and (B), subject to paragraphs (3)(c)(C) and (D) and subsection (3)(d) of this rule:

(A) The total amount of Oregon income taxes paid by the Oregon unitary group taxpayer, to which is added:

(i) The current tax benefit, at the state statutory rate, of tax depreciation on public utility property; and

(ii) Imputed Oregon tax benefits on charitable contributions of the unitary group, except those tax benefits associated with regulated operations of the utility; and

(B) The average of the ratios calculated for the utility's gross plant, wages and salaries and sales using amounts allocated to regulated operations of the utility as set forth in the utility's results of operations report in the numerator and amounts for the unitary group taxpayer in Oregon, adjusted to reflect amounts allocated to regulated operations of the utility, in the denominator.

(C) If a utility's taxes collected in rates reflect non-Oregon state income taxes, the utility must make a one-time permanent election in its October 15, 2006, tax report filing, or in the case of a change of the majority ownership of the utility's voting shares pursuant to ORS 757.511, in the first tax report filing that includes a tax reporting period reflecting the new ownership, to either:

(i) Multiply the total amount of Oregon income taxes paid in paragraph (3)(c)(A) of this rule before adjustments by the ratio calculated as the state income tax rate used by the Commission in establishing rates divided by the Oregon statutory tax rate set forth in ORS 317.061; or

(ii) Calculate the total state taxes paid using the formula set forth in paragraphs (3)(c)(A) and (B) of this rule on a state by state basis, apportioned to Oregon by multiplying the total state taxes paid by the average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator.

(D) When Oregon income tax attributable to system regulated operations is 100 percent allocated to Oregon in setting rates, 100 percent of the Oregon income tax of system regulated operations must be attributed to the regulated operations of the utility.

(d) The amount of state income taxes paid that is properly attributed to the regulated utility operations of the utility under subsection (3)(c) of this rule must not be less than:

(A) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the amount of the Oregon state stand-alone tax liability calculated for the regulated operations of the utility, minus the imputed negative tax associated with all Oregon state income tax losses of entities in the utility's unitary group; or

(B) For a utility for which non-Oregon state income taxes are included in rates, the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group, minus the sum of the imputed negative tax associated with all state income tax losses of entities in the utility's unitary group in each state; and

(ii) The average of the ratios calculated for gross plant, wages and salaries and sales using amounts allocated to the regulated operations of the utility in the numerator and amounts for the system regulated operations in the denominator.

(e) The amount of local income taxes paid to units of government that is properly attributed to the regulated operations of a utility is the product of the values in paragraphs (3)(e)(A) and (B) of this rule for each local taxing authority in Oregon:

(A) The total amount of income taxes paid by the taxpayer to the local taxing authority, as adjusted to include the imputed effect on local income taxes of:

(i) The current tax benefit of tax depreciation on public utility property; and

(ii) Imputed tax benefits on charitable contributions of the taxpayer except those associated with regulated operations of the utility; and

(B) The ratio calculated using the method for apportioning taxable income used by the local taxing authority, with the amount for the regulated operations of the utility in the local taxing authority in the numerator and the amount for the taxpayer in the local taxing authority in the denominator.

(4) On or before October 15 of each year, each utility must file a tax report with the Commission. The tax report must contain the following applicable information for each of the three preceding fiscal years:

(a) The amount of federal and state income taxes paid to units of government by the taxpayer, as adjusted pursuant to subparagraphs (3)(a)(A)(i), (ii) and (iii) of this rule;

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(b) The amount of the utility's federal and state income taxes paid that is incurred as a result of income generated by the regulated operations of the utility, where:

(A) The amount of federal income taxes paid is equal to the federal stand-alone tax liability calculated for the regulated operations of the utility;

(B) For a utility for which Oregon state income taxes are the only state income taxes included in rates, the utility's state income taxes paid is the Oregon state stand-alone tax liability calculated for the regulated operations of the utility; and

(C) For a utility for which non-Oregon state income taxes are included in rates, the amount of state income taxes paid is the product of:

(i) The sum of the state stand-alone tax liability calculated for the applicable system regulated operations in each state in which the utility is a member of a unitary group; and

(ii) The ratio calculated as the income of the regulated operations of the utility divided by the income of the system regulated operations;

(c) The amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule;

(d) The lowest of the amounts in subsections (4)(a), (4)(b) and (4)(c) of this rule, after making adjustments in paragraphs (4)(d)(A), (4)(d)(B), (4)(d)(C), (4)(d)(D), and (4)(d)(E), but no less than the deferred taxes related to depreciation of public utility property for regulated operations of the utility, except the deferred tax amount must be reduced by any tax refunds recognized in the reporting period and allocated to the regulated operations of the utility:

(A) The items defined in subsection (2)(t) of this rule;

(B) A reduction equal to the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility;

(C) A reduction equal to the tax benefit related to federal investment tax credits recognized by the Commission in establishing rates;

(D) An increase equal to the tax benefit of Oregon business energy tax credits, including those credits transferred pursuant to ORS 469.206 and 469.208, of the unitary group, excluding those credits covered by 757.268(13)(f)(B); and

(E) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(d)(A) of this rule;

(e) The amount of federal and state income taxes authorized to be collected in rates;

(f) The amount of the difference between the amounts in subsections (4)(d) and (4)(e) of this rule;

(g) The amount of local income taxes paid to units of government by the taxpayer, calculated for each local taxing authority, and to which is added the imputed effect on local income taxes of the amount in subparagraph (3)(e)(A)(i) of this rule;

(h) The amount of local income taxes paid to units of government by the taxpayer that is incurred as a result of income generated by the regulated operations of the utility, calculated as the stand-alone tax liability in each local taxing authority;

(i) The amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility, as calculated in section (3) of this rule for each local taxing authority;

(j) The lowest of the amounts in subsections (4)(g), (4)(h) and (4)(i) of this rule, calculated for each local taxing authority, after making adjustments for:

(A) The items defined in subsection (2)(t) of this rule; and

(B) A reduction equal to the local tax effect of the current tax benefit related to tax depreciation of public utility property for regulated operations of the utility; and

(C) Elimination of the iterative tax effect to the extent such iterative tax effect has not been eliminated by paragraph (4)(j)(A) of this rule;

(k) The amount of local income taxes collected from Oregon customers, calculated for each local taxing authority;

(l) The amount of the difference between the amounts in subsection (4)(j) and (4)(k) of this rule, calculated for each local taxing authority;

(m) The proposed surcharge or surcredit rate adjustments for each customer rate schedule to charge or refund customers the amount of the differences in subsections (4)(f) and (4)(l) of this rule;

(n) If the utility claims the minimum taxes paid amount set by subsections (3)(b) and (3)(d) of this rule, the total federal and state income tax losses in the utility's affiliated and unitary groups associated with the imputed negative tax claimed; and

(o) Any adjustments, in addition to the adjustments required in section (3) and subsections (4)(a) through (4)(n) of this rule, that the utility proposes to avoid probable violations of federal tax normalization requirements.

(5) In calculating the amount of taxes paid under sections (3) and (4) of this rule:

(a) "Taxes paid" must be allocated to each tax year employed by the utility for reporting its tax liability in the following manner:

(A) For any tax return prepared for the preceding tax year and filed on or before the date the tax report is due for such tax year, the utility must allocate each reported tax liability to the tax year for which such return is filed;

(B) For each adjustment made to an originally filed federal, state, or local tax return, including adjustments resulting from an audit, the utility must include the related tax liability or tax refund in the first tax report filed after the tax liability or tax refund has been paid or received and the taxing authority has made a final determination regarding the adjustment;

(C) Taxes paid must include any interest paid to or interest received from units of government with respect to tax liabilities.

(b) When a utility's fiscal year or parent changes, and a partial year consolidated federal income tax return is filed during the year, taxes paid must be calculated in the manner defined by ORS 314.355 and OAR 150-314.355. For purposes of this rule, the amount of taxes paid must reflect a weighted average of the months in effect related to each tax return filing.

(6) The utility must explain the method used for calculating the amounts in this rule and provide copies of all work papers and documents supporting the calculations.

(7) The Commission will establish an ongoing docket for each of the October 15 tax report filings. Upon signing a protective order prepared by the Commission, any intervenor may have access to all such tax report filings, subject to the terms of the protective order.

(a) Within 20 days following the tax report filings, an Administrative Law Judge will conduct a conference and adopt a schedule.

(b) Within 180 days of the tax report filings, the Commission will issue an order that contains the following findings:

(A) Whether the taxes authorized to be collected in rates for any of the three preceding fiscal years differs by \$100,000 or more from the amount of taxes paid to units of government that is properly attributed to the regulated operations of the utility;

(B) For the preceding fiscal year, the difference between the amount of federal and state income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of taxes authorized to be collected in rates;

(C) For the preceding fiscal year, the difference between the amount of local income taxes paid to units of government by the taxpayer that is properly attributed to the regulated operations of the utility and the amount of local taxes collected in rates; and

(c) Any other finding or determination necessary to implement the automatic adjustment clause.

(8) Upon entry of an order finding a difference of \$100,000 or more in section (7) of this rule, the utility must file an amended tariff, to be effective each June 1 unless otherwise authorized by the Commission, to implement a rate adjustment applying to taxes paid to units of government and collected from ratepayers for each fiscal year beginning on or after January 1, 2006.

(a) The utility must establish a balancing account and automatic adjustment clause tariff to recover or refund the difference determined by the Commission in paragraph (7)(b)(B) of this rule through a surcharge or surcredit rate adjustment.

(b) A utility that is assessed a local income tax must establish a separate balancing account and automatic adjustment clause tariff for each local taxing authority assessing such tax. The utility must apply a surcharge or surcredit on the bills of customers within the local taxing authority assessing the tax. The amount of the surcharge or surcredit must be calculated to recover or refund the difference determined by the Commission in paragraph (7)(b)(C) of this rule.

(c) Any rate adjustment must be calculated to amortize the difference determined by the Commission in paragraphs (7)(b)(B) and (7)(b)(C) of this rule over a period authorized by the Commission.

(d) Any rate adjustment must be allocated by customer rate schedule according to equal percentage of margin for natural gas utilities and equal cents per kilowatt-hour for electric utilities, unless otherwise authorized by the Commission.

(e) Each balancing account must accrue interest at the Commission-authorized rate for deferred accounts. For purposes of calculating interest,

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the amount of the difference calculated in this section of the rule will be deemed to be added to the balancing account on July 1 of the tax year.

(f) The automatic adjustment clause must not operate in a manner that allocates to customers any portion of the benefits of deferred taxes resulting from accelerated depreciation or other tax treatment of utility investment or regulated affiliate investment required to ensure compliance with the normalization method of accounting or any other requirements of federal tax law.

(g) On or before December 31, 2006, each utility must seek a Private Letter Ruling from the Internal Revenue Service on whether the utility's compliance with ORS 757.268 or this rule would cause the utility to fail to comply with any provision of federal tax law, including normalization requirements. Each utility must file a draft of its Private Letter Ruling Request with the Commission on or before November 15, 2006. While a utility's request for a Private Letter Ruling is pending, or a related Revenue Ruling is pending, no rate adjustment will be implemented, but interest will accrue according to subsection (8)(e) of this rule on the amount of any rate adjustment determined by the Commission pursuant to paragraphs (7)(b)(B) and (7)(b)(C) of this rule.

(9) No later than 30 days following the Commission's findings in section (7) of this rule, any person may petition to terminate the automatic adjustment clause on the basis that it would result in a material adverse effect on customers. In the event of a filing under this section, the applicable rate adjustment will not be implemented until the Commission makes its determination. If the Commission denies the request to terminate the rate adjustment, interest will accrue according to subsection (8)(e) of this rule on the final amount of the rate adjustment.

Stat. Auth.: ORS 183, 756, 757 & 759
Stats. Implemented: ORS 756.040, 756.060, 757.267 & 757.268
Hist.: PUC 8-2006, f. & cert. ef. 9-18-06; PUC 11-2007, f. & cert. ef. 9-18-07; PUC 4-2009(Temp), f. & cert. ef. 4-15-09 thru 10-9-09; PUC 11-2009, f. & cert. ef. 10-2-09; PUC 3-2010, f. & cert. ef. 6-28-10

**Secretary of State,
Business Services Division
Chapter 167**

Rule Caption: Updating the procurement rules for the Secretary of State.

Adm. Order No.: BSD 1-2010

Filed with Sec. of State: 7-7-2010

Certified to be Effective: 7-7-10

Notice Publication Date: 3-1-2010

Rules Amended: 167-001-0005, 167-001-0007, 167-001-0030, 167-001-0081, 167-001-0085, 167-001-0360, 167-001-0605

Subject: The Secretary of State is amending current procurement rules to incorporate recent legislative actions as well as Department of Administrative services Rules and Department of Justice Rules into their rules.

Rules Coordinator: Robin Rickard—(503) 986-2357

167-001-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Secretary of State adopts for use by its Business Services Division the Attorney General's Model Rules of Procedure as amended and effective on January 1, 2010.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the Attorney General or Business Services Division.]

Stat. Auth.: ORS 183
Stats. Implemented: ORS 183
Hist.: SS 1-1992, f. & cert. ef. 8-17-92; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05; BSD 1-2010, f. & cert. ef. 7-7-10

167-001-0007

Application of Rules

These OAR chapter 167, division 001 rules apply to public contracts of the Secretary of State first advertised, but if not advertised then entered into, on or after January 1, 2010.

Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279A.020, 279A.030 & 279A.065
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05; BSD 1-2010, f. & cert. ef. 7-7-10

167-001-0030

Basic Policy

(1) The Secretary will contract for personal services when the specialized skills, knowledge or resources are not available within the Secretary of State's office; when the work cannot be done in a reasonable

time with the Secretary's own work force; when it will be less expensive to contract for the work; or when an independent and impartial evaluation of a situation by recognized professionals is required. Contracts will be granted only after approval of the Secretary or his/her designee.

(2) Agreement for services of a contractor who is a member of the Public Employees' Retirement System and who is employed in another public agency may be by interagency agreement.

(3) For purposes of the Secretary, personal services means the services or type of services performed under a personal services contract. A contract for personal services means a contract, or a member of a class of contracts, other than a contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services, which primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including without limitation, a contract for the services of an accountant, physician or dentist, educator, information technology consultant, broadcaster, artist (including a photographer, filmmaker, painter, weaver or sculptor) or consultant.

(4) Before conducting a procurement for certain Services exceeding \$250,000.00 in value, the Secretary may be required to complete, a Feasibility Determination or a Cost Analysis under OAR 137-047-0250.

Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279A.015
Hist.: SS 3-1992, f. & cert. ef. 10-13-92; BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05; BSD 1-2010, f. & cert. ef. 7-7-10

167-001-0081

Reinstatement of Expired Contracts

(1) The Secretary of State, Business Services Division Chief Procurement Officer may approve reinstatement of an expired Personal Services Contract if the following conditions are met:

(a) Failure to renew or extend the Personal Services Contract would prevent the Secretary from carrying out the duties of the Secretary;

(b) Written request for reinstatement is submitted to the Business Services Division Chief Procurement Officer for approval within ninety (90) days after the expiration of the original contract;

(c) A written statement justifying the Contractor's completion of the work after expiration of the contract, there is no change in the Statement of Work, and either:

(A) The reinstatement is exclusively for the purpose of permitting completion of the work or services for no additional compensation; or

(B) When services are of a continuing or repetitive nature which are compensated at an hourly, daily or similar periodic rate, the reinstatement either:

(i) Does not increase the rate of compensation; or

(ii) Does not increase the rate of compensation so as to exceed the rate of the increase determined by comparing the Portland, Oregon Metropolitan Area Consumer Price Index (all items) published immediately prior to the date the original contract was established with the same Index published immediately prior to the date of the reinstatement and extension.

(2) When a Personal Services Contract is reinstated pursuant to this section, the Secretary may compensate the Contractor, at the rate of compensation established in the original contract, for work performed in the interim between the expiration of the original contract and the execution and approval(s) of the extension or amendment.

(3) This rule authorizes only one reinstatement of a Personal Services Contract.

(a) No reinstatement of a Personal Services Contract shall modify the original contract except with respect to the time for performance.

(b) If the reinstatement of a Personal Services Contract pursuant to this rule raises the aggregate amount of compensation to a level that requires Attorney General approval under ORS 291.045 and 291.047, the Secretary shall obtain such approval or ratification before the extension becomes binding and before any services may be performed under the reinstated contract.

Stat. Auth.: ORS 279A.065 & 279A.070
Stats. Implemented: ORS 279A.050, 279A.065, 279A.070 & 279A.140
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05; BSD 1-2010, f. & cert. ef. 7-7-10

167-001-0085

Legal Sufficiency Review

Unless exempted by the Attorney General under ORS 291.045 and 291.047, all personal service (including architectural and engineering services contracts) and information technology contracts, and all other public contracts in excess of \$150,000.00, will require legal sufficiency review by the Department of Justice.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 291.045 & 291.047
Stats. Implemented: ORS 291.045 & 291.047
Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05; BSD 1-2010, f. & cert. ef. 7-7-10

167-001-0360

Purchases Through Federal Programs

(1) The Secretary may purchase supplies and services under the Federal Programs identified in ORS 279A.180, without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085, provided that the Secretary has federal authorization to purchase through the program.

(2) To purchase through a Federal Program, the Secretary must document in its contract file that:

(a) The acquisition meets the Secretary's requirements;

(b) The price and other terms of the acquisition are advantageous to the Secretary;

(c) No other DAS price agreement for the supply or services exists, based upon the Secretary's review of the contracts on ORPIN;

(d) Preference programs, including but not limited to the Inmate Work Program of ORS 279A.025(2)(i);

(e) The Secretary may add to its contract such contract terms and conditions as are required by State statute or rules, if such additions do not conflict with the Federal Program's contract terms and conditions, including but not limited to prompt payment requirements, additional commercial terms, and conflict resolution.

Stat. Auth.: ORS 279A.065 & 279A.070

Stats. Implemented: ORS 279A.180

Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05; BSD 1-2010, f. & cert. ef. 7-7-10

167-001-0605

Selection and Award of Public Contracts

(1) Secretary officers, employees or agents involved in the process of the selection and award of public contracts must carefully review the provisions of ORS 244.040.

(2) Secretary officers, employees and agents are prohibited from soliciting or receiving gifts, which means something of economic value given to a public official or the public official's relative or member of the household of the public official without an exchange of valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, and which is not extended to others who are not public officials or the relatives of public officials or members of the household of the public official on the same terms and conditions; and something of economic value given to a public official or the public official's relative or member or the household of the public official for valuable consideration less than that required from others who are not public officials.

(3) Secretary officers, employees and agents are prohibited from using their official position for personal or financial gain.

(4) Secretary officers, employees and agents are prohibited from using confidential information gained in the course of the screening and selection procedures for personal or financial gain.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065(5)(a), 279A.070 & 279A.140

Hist.: BSD 1-2005(Temp), f. 2-25-05, cert. ef. 3-1-05 thru 8-28-05; BSD 2-2005, f. & cert. ef. 6-15-05; BSD 1-2010, f. & cert. ef. 7-7-10

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**Secretary of State,
Corporation Division
Chapter 160**

Rule Caption: Updates current name availability rules.

Adm. Order No.: CORP 9-2010

Filed with Sec. of State: 6-22-2010

Certified to be Effective: 7-1-10

Notice Publication Date: 6-1-2010

Rules Amended: 160-010-0010, 160-010-0013, 160-010-0014

Subject: These rules detail the criteria used to determine if business names may be registered with the Corporation Division. The statutory standard is that names may only be registered if they are distinguishable on record. These rules define what does and does not make a name distinguishable.

Rules Coordinator: Karen Hutchinson—(503) 986-2364

160-010-0010

Definitions

For the purposes of OAR 160-010-0010 through 160-010-0014:

(1) "Distinguishable" means visually distinct, in writing, as opposed to a comparison of words as they sound. Thus, homonyms, such as "fair" and "fare" are permitted; whereas heteronyms such as "wind" and "wind" are not distinguishable.

(2) "Entity identifier" means the words "corporation", "company", "incorporated", "limited", "limited liability company", "limited liability partnership", "business trust", "professional corporation" or "limited partnership" or any abbreviation or derivation thereof. An entity identifier must be separate from other words or parts of words in the business name to be considered an entity identifier. Example: "ProCorp" does not have an entity identifier. "ProCorp, Inc." does.

(3) "Key Word" means a word other than an article, preposition, conjunction, or entity identifier at the end of a business name.

Stat. Auth.: ORS 56, 58, 60, 62, 63, 65, 68, 70, 128, 183, 554 & 648

Stats. Implemented: ORS 58.085, 60.094, 62.131, 63.094, 65.094, 68.735, 70.010, 128.580, 554.005 & 648.051

Hist.: CC 14-1986, f. & ef. 7-23-86; Renumbered from 815-050-0041, 815-050-0043, 815-050-0045, 815-050-0051 & 815-050-0055, CC 2-1988, f. 9-28-88, cert. ef. 10-3-88; CORP 1-1991, f. & cert. ef. 1-22-91; CORP 1-1993, f. 12-29-93, cert. ef. 1-1-94; CORP 1-1994, f. 12-30-94, cert. ef. 1-1-95; CORP 3-1995, f. 8-31-95, cert. ef. 9-1-95; CORP 4-2006, f. & cert. ef. 6-26-06; CORP 9-2010, f. 6-22-10, cert. ef. 7-1-10

160-010-0013

Not Distinguishable on Record

A name is not distinguishable on the records of the Secretary of State Business Registry office from the name of any other active organized entity, or from a reserved or registered name, if the names only differ in one or more of the following ways:

(1) Entity identifiers at the end of a name

(2) Punctuation or special characters

(3) Capitalization

(4) Spacing

(5) The presence or absence of an article, preposition, or conjunction, or a symbol for that word, including "a," "an," "and," "at," "by," "for," "in," "plus," "the," "to," and "with." Examples of symbols include "&," "@," and "+."

(6) An "s" is added or deleted to make the word plural, singular, or possessive.

Stat. Auth.: ORS 56, 58, 60, 62, 63, 65, 68, 70, 128, 183, 554 & 648

Stats. Implemented: ORS 58.085, 60.094, 62.131, 63.094, 65.094, 68.735, 70.010, 128.580, 554.005 & 648.051

Hist.: CORP 4-2006, f. & cert. ef. 6-26-06; CORP 9-2010, f. 6-22-10, cert. ef. 7-1-10

160-010-0014

Prohibitions

(1) An entity identifier, except for "company" and abbreviations thereof, cannot be used with an assumed business name, unless all the registrants on the assumed business name are entities identified in the name.

(2) The Secretary of State Business Registry office shall not approve requested names that imply in any way that the business is an agency of the state, or any of its political subdivisions, without proof of authorization to register such a name.

Stat. Auth.: ORS 56, 58, 60, 62, 63, 65, 68, 70, 128, 183, 554 & 648

Stats. Implemented: ORS 58.085, 60.094, 62.131, 63.094, 65.094, 68.735, 70.010, 128.580, 554.005 & 648.051

Hist.: CORP 4-2006, f. & cert. ef. 6-26-06; CORP 9-2010, f. 6-22-10, cert. ef. 7-1-10

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**Teacher Standards and Practices Commission
Chapter 584**

Rule Caption: Adopts new CTE rules, amends fees, clarifies IAL requirements, and deletes obsolete rule language.

Adm. Order No.: TSPC 4-2010

Filed with Sec. of State: 7-15-2010

Certified to be Effective: 7-15-10

Notice Publication Date: 4-1-2010

Rules Adopted: 584-042-0021, 584-042-0036, 584-042-0044, 584-042-0060, 584-042-0070, 584-042-0081, 584-042-0090

Rules Amended: 584-020-0040, 584-036-0055, 584-044-0014, 584-044-0015, 584-080-0012

Subject: 584-020-0040 – *Grounds for Disciplinary Action:* Reconciles 60-day failure to give notice with statutory changes. Makes standards for assigning an educator without valid licensure the same as teachers working without valid license.

584-036-0055 – *Fees:* Renames new CTE licenses, adds provision for intermittent renewal of new CTE licenses, clarifies language.

584-042-0021 – *Definitions:* Updates and clarifies definitions for new CTE rules.

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584-042-0036 – *Career and Technical Education (CTE) II Teaching License*: Removes joint application requirement (educator and district). Disconnects the license from any specific district program (license is transportable).

584-042-0044 – *Career and Technical Education Endorsements*: Clarifies how teachers with nonprovisional teaching licenses may add endorsements onto their licenses.

584-042-0060 – *Waivers*: Explains waivers of work experience or associates degree requirements for CTE I. Adds that math and language arts requirements may not be waived.

584-042-0070 – *Career and Technical Education Work Experience*: Defines work experience to be at least 1800 hours of verifiable employment, internship or volunteer experience. Clarifies ODE's authority to certify work experience in lieu of the IAC process.

584-042-0081 – *Career and Technical Education Restricted Substitute Teaching License*: Explains requirements and limitations for CTE Restricted Substitute Teaching licenses. Allows ability for license holder to work in multiple districts (c).

584-042-0090 – *Transfer of a CTE I License to Another District*: Removes reference to CTE II as “transferrable.” License is not restricted to district per OAR 584-042-0036.

584-044-0014 – *Basic School Psychologist*: Removes obsolete language.

584-044-0015 – *Standard Personnel Service License Requirements*: Deletes obsolete language.

584-080-0012 – *Initial Administrator License (IAL)*: Clarifies work beyond Initial Administrator may occur anytime after the master's is received. Continuing Administrator License (CAL) or equivalent must be completed within 3 years of obtaining a superintendent position only when position is in Oregon.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-020-0040

Grounds for Disciplinary Action

(1) The Commission will deny, revoke or deny the right to apply for a license or charter school registration to any applicant or educator who, has been convicted of any of the crimes listed in ORS 342.143, or the substantial equivalent of any of those crimes if convicted in another jurisdiction or convicted of attempt to commit such crimes as defined in 161.405. Evaluation of substantially equivalent crimes or attempts to commit crimes will be based on Oregon laws in effect at the time of the conviction, regardless of the jurisdiction in which the conviction occurred. The crimes listed in 342.143 are:

- (a) ORS 163.095 – Aggravated Murder;
- (b) ORS 163.115 – Murder;
- (c) ORS 163.185 – Assault in the First Degree;
- (d) ORS 163.235 – Kidnapping in the First Degree;
- (e) ORS 163.355 – Rape in the Third Degree;
- (f) ORS 163.365 – Rape in the Second Degree;
- (g) ORS 163.375 – Rape in the First Degree;
- (h) ORS 163.385 – Sodomy in the Third Degree;
- (i) ORS 163.395 – Sodomy in the Second Degree;
- (j) ORS 163.405 – Sodomy in the First Degree;
- (k) ORS 163.408 – Unlawful Sexual Penetration in the Second Degree;
- (l) ORS 163.411 – Unlawful Sexual Penetration in the First Degree;
- (m) ORS 163.415 – Sexual Abuse in the Third Degree;
- (n) ORS 163.425 – Sexual Abuse in the Second Degree;
- (o) ORS 163.427 – Sexual Abuse in the First Degree;
- (p) ORS 163.432 – Online Sexual Corruption of a Child in the Second Degree;
- (q) ORS 163.433 – Online Sexual Corruption of a Child in the First Degree;
- (r) ORS 163.435 – Contributing to the Sexual Delinquency of a Minor;
- (s) ORS 163.445 – Sexual Misconduct;
- (t) ORS 163.465 – Public Indecency;
- (u) ORS 163.515 – Bigamy;
- (v) ORS 163.525 – Incest;
- (w) ORS 163.547 – Child Neglect in the First Degree;
- (x) ORS 163.575 – Endangering the Welfare of a Minor;

- (y) ORS 163.670 – Using Child in Display of Sexually Explicit Conduct;
 - (z) ORS 163.675 – Sale or Exhibition of Visual Reproduction of Sexual Conduct by a Child;
 - (aa) ORS 163.680 – Paying for Viewing Sexual Conduct Involving a Child;
 - (bb) ORS 163.684 – Encouraging Child Sexual Abuse in the First Degree;
 - (cc) ORS 163.686 – Encouraging Child Sexual Abuse in the Second Degree;
 - (dd) ORS 163.687 – Encouraging Child Sexual Abuse in the Third Degree;
 - (ee) ORS 163.688 – Possession of Materials Depicting Sexually Explicit Conduct of a Child in the First Degree;
 - (ff) ORS 163.689 – Possession of Materials Depicting Sexually Explicit Conduct of a Child in the Second Degree;
 - (gg) ORS 164.325 – Arson in the First Degree;
 - (hh) ORS 164.415 – Robbery in the First Degree;
 - (ii) ORS 166.005 – Treason;
 - (jj) ORS 166.087 – Abuse of a Corpse in the First Degree;
 - (kk) ORS 167.007 – Prostitution;
 - (ll) ORS 167.012 – Promoting Prostitution;
 - (mm) ORS 167.017 – Compelling Prostitution;
 - (nn) ORS 167.054 – Furnishing Sexually Explicit Material to a Child
 - (oo) ORS 167.057 – Luring a Minor
 - (pp) ORS 167.062 – Sadomasochistic Abuse for Sexual Conduct in a Live Show;
 - (qq) ORS 167.075 – Exhibiting an Obscene Performance to a Minor;
 - (rr) ORS 167.080 – Displaying Obscene Materials to Minors;
 - (ss) ORS 167.090 – Publicly Displaying Nudity or Sex for Advertising Purposes;
 - (tt) ORS 475.848 – Unlawful manufacture of heroin within 1,000 feet of school;
 - (uu) ORS 475.852 – Unlawful delivery of heroin within 1,000 feet of school;
 - (vv) ORS 475.858 – Unlawful manufacture of marijuana within 1,000 feet of school;
 - (ww) ORS 475.860 – Unlawful delivery of marijuana;
 - (xx) ORS 475.862 – Unlawful delivery of marijuana within 1,000 feet of school;
 - (yy) ORS 475.864(4) – Possession of less than 1 ounce of marijuana within 1,000 feet of school;
 - (zz) ORS 475.868 – Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
 - (aaa) ORS 475.872 – Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school;
 - (bbb) ORS 475.878 – Unlawful manufacture of cocaine within 1,000 feet of school;
 - (ccc) ORS 475.880 – Unlawful delivery of cocaine;
 - (ddd) ORS 475.882 – Unlawful delivery of cocaine within 1,000 feet of school;
 - (eee) ORS 475.888 – Unlawful manufacture of methamphetamine within 1,000 feet of school;
 - (fff) ORS 475.890 – Unlawful delivery of methamphetamine;
 - (ggg) ORS 475.892 – Unlawful delivery of methamphetamine within 1,000 feet of school;
 - (hhh) ORS 475.904 – Unlawful manufacture or delivery of controlled substance within 1,000 feet of school; or
 - (iii) ORS 475.906 – Penalties for distribution to minors.
- (2) An applicant fails to meet the requirement of ORS 342.143 “good moral character” if the applicant engages in gross neglect of duty, gross unfitness, in violation of section (4) of this rule or other acts which are in violation of sections (1) or (3) of this rule.
- (3) The Commission may initiate proceedings to suspend or revoke the license or registration of an educator under ORS 342.175 or deny a license or registration to an applicant under 342.143 who:
- (a) Has been convicted of a crime not listed in section (1) of this rule, if the Commission finds that the nature of the act or acts constituting the crime for which the educator was convicted render the educator unfit to hold a license;
 - (b) Is charged with knowingly making any false statement in the application for a license or registration;
 - (c) Is charged with gross neglect of duty;
 - (d) Is charged with gross unfitness; or

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(e) Is convicted of a crime involving the illegal use, sale or possession of controlled substances.

(4) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following may be admissible as evidence of gross neglect of duty. Consideration may include but is not limited to:

(a) Knowing and substantial unauthorized use of: school name or financial credit; school materials or equipment for personal purposes; or school personnel to provide personal services unrelated to school business;

(b) Knowing and substantial unauthorized use of employment time or school resources for private purposes;

(c) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

(d) Unreasonable physical force against students, fellow employees, or visitors to the school, except as permitted under ORS 339.250;

(e) Violent or destructive behavior on school premises or at a school-sponsored activity;

(f) Any sexual conduct with a student;

(g) Appearing on duty or at any district-sponsored activity while under the influence of alcohol or any controlled substance;

(h) Unauthorized disclosure of student records information received in confidence by the educator under a statutory privilege. (See, subsection (6), below);

(i) Knowingly assigning an educator in violation of licensure requirements;

(j) Resignation from a contract in violation of ORS 342.553,

(k) Knowing violation of any order or rule of the Commission;

(l) Sexual harassment;

(m) Knowing and willful failure of a chief administrator to report a violation of Commission standards as required by OAR 584-020-0041;

(n) Substantial deviation from professional standards of competency set forth in OAR 584-020-0010 through 584-020-0030;

(o) Substantial deviation from professional standards of ethics set forth in OAR 584-020-0035;

(p) Subject to the exercise of any legal right or privilege, failure or refusal by an educator under investigation to respond to requests for information, to furnish documents or to participate in interviews with a Commission representative relating to a Commission investigation;

(q) Knowing and unauthorized use of school computer equipment to receive, store, produce or send sexually explicit materials;

(r) Knowingly working without a license; or

(s) Failing to report child abuse pursuant to ORS 419B.010.

(5) Gross unfitness is any conduct which renders an educator unqualified to perform his or her professional responsibilities. Conduct constituting gross unfitness may include conduct occurring outside of school hours or off school premises when such conduct bears a demonstrable relationship to the educator's ability to fulfill professional responsibilities effectively. The following may be admissible as evidence of gross unfitness. Consideration may include but is not limited to:

(a) Revocation, suspension or denial of a license by another state for reasons and through procedures that are the same as, or substantially equivalent to, those permitting similar action in Oregon;

(b) Fraud or misrepresentation;

(c) Conviction of violating any federal, state, or local law. A conviction includes any final judgment of conviction by a court whether as the result of guilty plea, no contest plea or any other means.

(d) Commission of an act listed in OAR 584-020-0040(1);

(e) Admission of or engaging in acts constituting criminal conduct, even in the absence of a conviction; or

(f) Violation of a term of probation imposed by a court.

(6) In any proceeding brought under subsection (4)(h) of this rule, the Commission may not impose a sanction more severe than a suspension of the educator's license.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.143 & 342.175 - 342.190

Hist.: TS 5-1983, f. & ef. 7-21-83; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 2-1988, f. & cert. ef. 4-7-88; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1993, f. & cert. ef. 9-29-93; TS 5-1996, f. & cert. ef. 9-24-96; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 8-1998 f. & cert. ef. 12-9-98; TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 6-1999(Temp), f. & cert. ef. 9-20-99 thru 3-17-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 4-2000, f. & cert. ef. 7-17-00; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 7-2007, f. & cert. ef. 12-14-07; TSPC 8-2008, f. & cert. ef. 11-13-08; TSPC 4-2010, f. & cert. ef. 7-15-10

584-036-0055

Fees

(1) All fees are assessed for evaluation of the application and are not refundable.

(2) If the applicant is eligible for the license, registration, or certificate for which application is made and the license, registration or certificate is issued within 90 days of original application, the commission shall issue the license, without additional charge with the following exceptions:

(a) If the commission determines the application is incomplete and fails to notify the applicant in less than one calendar week, the commission will extend the 90 days by an amount equal to the number of days the commission delayed notifying the applicant of incomplete items.

(b) For renewable licenses with a 120 day grace period, the original application fee remains good throughout the 120 days.

(c) If the commission fails to issue the license within 90 days due to commission backlog, the fee shall remain good until the license is issued or 120 days, whichever is less.

(3) The fee for evaluating an initial application:

(a) Initial I License (3 years): \$100;

(b) Initial I Teaching License (18 months): \$50;

(c) Initial II License (3 years): \$100;

(d) Basic License (3 years): \$100;

(e) Continuing License (5 years): \$100;

(f) Standard License (5 years): \$100;

(g) Restricted Transitional License (1 year or 3 years): \$100;

(h) Limited License (3 years): \$100;

(i) American Indian Language License (3 years): \$100;

(j) Substitute License (3 years): \$100;

(k) Restricted Substitute License (3 years, 60 days per year): \$100;

(l) Exceptional Administrator License (3 years): \$100;

(m) Career and Technical Education I Teaching License (3 years): \$100;

(n) Career and Technical Education II Teaching License (3 years): \$100;

(o) NCLB Alternative Route License (3 years): \$100;

(p) Emergency Teaching License (term at discretion of Executive Director): \$100;

(q) School Nurse Certification (3 years): \$100;

(r) International Visiting Teaching License (1 year) \$100.

(4) The fee for evaluating all applications for a first Oregon license based on completion of an out-of-state educator preparation program or an out of state license is \$120 regardless of the license issued.

(5) The fee for registration of a charter school teacher or administrator is \$75 which includes the fee for required criminal records and fingerprinting costs.

(6) The fee for evaluating an application for renewal of any license or certification is \$100 except as follows:

(a) Renewal of a one-year Restricted Transitional Teaching License is \$25;

(b) Renewal of a charter school registration is \$25;

(c) Renewal of an International Visiting Teacher License is \$25;

(d) Renewal of a one-year CTE I Teaching License \$25.

(7) The fee for each of the following circumstances is \$20:

(a) A duplicate license, registration, or certificate for any reason;

(b) An approved extension to a provisional license; and

(c) Adding a district to any existing restricted or provisional teaching license.

(8) The fee for adding an endorsement or grade authorization level to a currently valid license is \$100. No additional fee is required to add an endorsement or authorization in conjunction with an application for renewal or reinstatement of a license.

(9) The fee to reinstate an expired license or certificate is \$100 plus a late application fee of \$25 for each month or portion of a month that the license or certificate has been expired to a maximum of \$200 total.

(a) The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license, or school nurse certification.

(b) Late fees may only be imposed one time following the expiration of a license or school nurse certificate. If the applicant does not initially qualify for the license or certificate the applicant is seeking to reinstate, no additional late fees will be imposed upon application for subsequent licensures so long as the applicant has any current active Oregon license, registration or certification in effect at the time of application.

(10) The fee for reinstatement of a suspended license, or certificate is \$100 in addition to the \$100 application fee for a total of \$200. The fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license or certificate.

(11) The fee for reinstatement of a suspended charter school registration is \$50 and does not include any separate fingerprint fee that may be

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required if more than three years has elapsed from the date of the expired registration.

(12) In addition to the application fees required by this rule, the Commission shall collect a late application fee not to exceed \$25 per month up to a maximum of \$125 from an applicant who fails to make timely application for renewal of the license, certificate or registration.

(13) The fee for reinstatement of a revoked license or certificate is \$150 in addition to the \$100 application fee for a total of \$250. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license, or school nurse certificate.

(14) The fee for reinstatement of a revoked charter school registration is \$150 in addition to the \$25 application fee for a total of \$175. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration.

(15) Forfeiture for a check which the applicant's bank will not honor is \$25, unrelated to any evaluation fees. The total amount due shall be paid in cash, credit, or Money Order at the Commission's office.

(16) The fee for evaluating licensure applications submitted on behalf of teachers participating in exchange programs or on Congressional appointment from foreign countries is \$100.

(17) The fee for alternative assessment in lieu of the test for licensure endorsement is \$100.

(18) The fee for expedited service for an emergency or other license, registration or certificate is \$99 plus the fee for the license, registration or certificate application as defined in this administrative rule.

(19) The fee to evaluate an application for reinstatement of an expired charter school registration is \$25 plus a late application fee of \$25 for each month or portion of a month that the registration has been expired to a maximum of \$125 total. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration.

(20) The fee for a criminal records check including fingerprinting is \$62.

(21) The fee for a "highly qualified teacher" evaluation is \$50.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200, 342.400 & 342.985

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-95, cert. ef. 10-15-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2003, f. & cert. ef. 1-13-03; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 11-2005(Temp), f. 11-18-05, cert. ef. 1-1-06 thru 6-29-06; TSPC 5-2006, f. & cert. ef. 2-10-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2008, f. & cert. ef. 6-13-08; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 1-2009(Temp), f. & cert. ef. 2-27-09 thru 8-25-09; Administrative correction 9-29-09; TSPC 4-2009, f. & cert. ef. 9-22-09; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 4-2010, f. & cert. ef. 7-15-10

584-042-0021

Definitions

(1) "Approved Career and Technical Education Program:" A career and technical education program (CTE), approved by the Oregon Department of Education (ODE).

(2) "Career and Technical Education (CTE) Mentor:" A teacher holding a Five-Year, CTE II, Basic, Standard, Initial, Initial I, Initial II or Continuing teaching license who guides and supports a beginning CTE teacher on a CTE I Teaching License with instructional planning and preparation, delivery of classroom instruction, classroom management, assessment of student performance, and professional development. The assigned mentor must be approved by ODE to be a CTE mentor.

(3) "Career and Technical Education Professional Development Plan:" A plan for personal professional growth during the life of the Career and Technical Education I Teaching License and the Career and Technical Education II Teaching License consistent with OAR 584-042-0051 *Career and Technical Education Professional Development Plan*.

(4) "Regional Coordinator:" An individual hired by a local educational agency or community college and officially recognized by the Oregon Department of Education (ODE) to specifically coordinate the ODE approved regional system of Career and Technical Education.

(5) "Instructor Appraisal Committee (IAC):" A committee organized in accordance with OAR 584-042-0022.

(6) "Significant Progress:" Significant progress toward completion of CTE professional development plan requirements means the applicant has made a confirmed commitment in each year the license is held toward completing the CTE professional development plan submitted upon application

to TSPC. Significant progress may be evidenced by completion of at least one-third of the requirements contained within the professional development plan. The progress must have been completed within the last year preceding application for renewal.

(7) "Waivers:" A waiver of the work experience or academic requirements for the CTE I Teaching License in accordance with OAR 584-042-0060 *Waivers*.

(8) "Work Experience:" Planned and coordinated work experience or previous and documented work experience that meets the criteria included in OAR 584-042-0070 *Work Experience*.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10; TSPC 4-2010, f. & cert. ef. 7-15-10

584-042-0036

Career and Technical Education II Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, an applicant may be granted a Career and Technical Education II Teaching License, valid for three years of teaching in an approved career and technical education program, may be issued.

(2) The Career and Technical Education II Teaching License is valid to teach in ODE approved career and technical education programs in the endorsement areas for which the educator is specifically licensed. Any CTE teaching license is valid for assignments in diversified occupations or as work experience coordinators.

(3) The application packet must include the following:

(a) A signed and dated TSPC application and the appropriate fees;

(b) Evidence that all the requirements for the Career and Technical Education I Teaching License as set forth in OAR 584-042-0031;

(c) Evidence of one year or the equivalent of career and technical education teaching experience while holding a license valid for the assignment as verified on a Professional Educational Experience Report Form (PEER);

(d) Evidence of completion of the CTE professional development plan as prescribed by the IAC and as filed with TSPC when the CTE I was first issued, including evidence the applicant has either:

(A) Transcripts of any coursework required by the CTE professional development plan; or

(B) Official verification of work experience required by the CTE professional development plan on a form approved by the ODE.

(4) Transcripts of coursework submitted for eligibility for the Career and Technical Education II Teaching License must be completed through an approved teacher education institution or an accredited community college.

(5) The Career and Technical Education II Teaching License is renewable upon completion of 75 clock hours or the equivalent of continuing professional development in accordance with OAR 584, division 90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 4-2010, f. & cert. ef. 7-15-10

584-042-0044

Career and Technical Education Endorsements

(1) Career and Technical Education (CTE) Endorsements are subject-matter endorsements in the career and technical fields.

(2) Only the Basic, Standard, Initial, Continuing or CTE II Teaching Licenses are eligible to hold any CTE endorsement. A CTE I Teaching License may only hold a single CTE endorsement.

(3) Endorsements indicate the scope of the subject-matter that may be taught on the license which holds the endorsement. Specific courses allowed within the scope of each endorsement are identified by TSPC and published on the TSPC web site. Endorsements include the following:

(a) Endorsements in the Agriculture, Food and Natural Resource Systems area include:

(A) Agriculture Science and Technology;

(B) Natural Resources Management; and

(C) Environmental Services.

(b) Endorsements in the Arts, Information and Communications area include:

(A) Publishing and Broadcasting;

(B) Information and Communications Technology; and

(C) Visual, Performing and Media Arts.

(c) Endorsements in the Business and Management area include:

(A) Business Management and Administration;

(B) Finance;

(C) Hospitality and Tourism;

(D) Information and Communications Technology; and

(E) Marketing.

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(d) Endorsements in the Health Sciences area include: Health Sciences.

(e) Endorsements in the Human Resource Systems area include:

- (A) Education and Related Fields;
- (B) Hospitality and Tourism;
- (C) Human Services; and
- (D) Public Services.

(f) Endorsements in the Industrial and Engineering Systems area include:

- (A) Construction Technology;
- (B) Engineering Technology;
- (C) Information and Communications Technology;
- (D) Transportation Technology; and
- (E) Manufacturing Technology.

(4) Applicants for the CTE I Teaching License may be limited with regard to the courses they may teach in the first three years of licensure. The IAC will determine whether the applicant is fully prepared to teach all courses with the endorsement area in which the applicant seeks licensure.

(5) All CTE II Teaching License holders are eligible to teach within the full scope of the CTE endorsement.

(6) Holders of a Basic, Standard, Initial or Continuing teaching license who meet all of the ODE-approved work experience requirements for a CTE II Teaching License may be eligible to add CTE endorsements onto their underlying teaching license. The endorsement shall be valid for the same amount of time as the underlying license. Only ODE may approve work experience under this subsection.

(7) Holders of Basic, Standard, Initial, or Continuing teaching licenses who do not meet the work experience requirements for a CTE endorsement must apply for a CTE I Teaching License in that endorsement area. Upon verification of the work experience requirements in an application to TSPC, the endorsement may be added to the holder's Basic, Standard, Initial or Continuing Teaching License.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10; TSPC 4-2010, f. & cert. ef. 7-15-10

584-042-0060

Waivers

(1) The Instructor Appraisal Committee (IAC) may recommend waiver of the work experience or the associate degree requirements for the CTE I Teaching License to the ODE. The waiver recommendation must include the basis for the recommendation including:

(a) The applicant's applicable academic preparation justifying waiver of the associate's degree requirements for the CTE I Teaching License;

(b) The applicant's work experience or training justifying waiver of the work experience requirement for the CTE I Teaching License;

(c) The IAC's recommendations related to the CTE Professional Development Plan; and

(d) A signed copy of the CTE Professional Development plan. (See OAR 584-042-0051 *CTE Professional Development Plan*.)

(2) An approved waiver must be signed and dated within ninety (90) days from the date of application to ODE and must be submitted to the TSPC as part of the application for the CTE I Teaching License.

(3) The IAC recommendation for waiver is advisory only and may be denied by the ODE.

(4) The math and language arts requirements defined in OAR 584-042-0051 *Career and Technical Education (CTE) Professional Development Plan*, may not be waived.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 4-2010, f. & cert. ef. 7-15-10

584-042-0070

Career and Technical Education Work Experience

(1) Previous and Documented Work Experience: Previous and documented work experience is at least 1800 hours of verifiable employment, internship, or volunteer experience in a career field specifically related to the applicant's endorsement area.

(a) Previous and documented work experience must be completed and verifiable within the five year period immediately preceding the application for CTE licensure or endorsement.

(b) Previous and documented work experience may be verified to the ODE when the applicant holds a non-provisional teaching license.

(2) Planned and Coordinated Work Experience: Planned and coordinated work experience is at least 600 hours of employment, internship, or volunteer experience designed to increase specific business and industry

knowledge and skills specifically related to the applicant's endorsement area. The planned and coordinated work experience may be prescribed by the Instructor Appraisal Committee and must be indicated in the educator's approved professional development plan as defined in OAR 584-042-0051.

(3) One hour of Planned and Coordinated Work Experience equals three hours of Previous and Documented Work Experience.

(4) Related industry certification or licensure may be considered proof of valid work experience. (See 584-042-0051 *CTE Professional Development Plan* for work experience requirements.)

(5) The ODE may certify work experience pursuant to this rule in lieu of the IAC process and upon request from an applicant for the CTE I Teaching License.

(6) An approved Oregon teacher licensure program may certify work experience pursuant to this rule for candidates seeking an Initial I Teaching License in CTE endorsement areas listed in OAR 584-042-0044.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 4-2010, f. & cert. ef. 7-15-10

584-042-0081

Career and Technical Education Restricted Substitute Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Career and Technical Education Restricted Substitute Teaching License.

(a) This license, issued for three years and renewable, is valid to substitute teach for a total of 60 days a school year (September through June) in any Career and Technical Education endorsement area to replace a licensed CTE teacher in an ODE-approved Career and Technical Education program who is temporarily unable to work.

(b) The 60 days a year limit applies regardless if the holder of the license substitutes in multiple districts (which must co-apply with the applicant for the license).

(c) Districts who did not co-apply with the applicant may request permission to add the substitute to their district upon filing an additional application and fee.

(d) An assignment on this license may not exceed 10 days consecutively under any circumstances.

(e) This license is not eligible for substitute teaching in classrooms outside of ODE-approved CTE programs.

(2) To be eligible for a Career and Technical Education Restricted Substitute Teaching License, the applicant must:

(a) Submit evidence the applicant holds an associate's degree or higher from an accredited institution or an approved foreign equivalent, or obtain recommendation from the Oregon Department of Education for a waiver of the associate's degree (See OAR 584-042-0060 Waivers);

(b) Furnish fingerprints in the manner prescribed by the commission if the applicant has not been fingerprinted or has not held an active license issued by the commission in the past three years;

(c) Obtain a passing score on the *Protecting Student and Civil Rights in the Educational Environment* test;

(d) Complete the appropriate Instructor Appraisal Committee evaluation as prescribed by ODE rule, be recommended for specific endorsements by the committee, and submit evidence of the following:

(A) Verification of a minimum of fifteen (15) quarter hours or ten (10) semester hours of teacher preparation. (See required areas for preparation in OAR 584-042-0051 *CTE Professional Development Plan*.); and

(B) Verification of related work experience as specified by OAR 584-042-0070 *Work Experience* at a technical skill level within the last five years. (See required hours in OAR 584-042-0051 *CTE Professional Development Plan*.); and

(e) Provide a letter from the co-applicant district stating the need for the license.

(3) To be eligible for renewal of the Career and Technical Education Restricted Substitute Teaching License an applicant must:

(a) File a correct and complete application in form and manner prescribed by the commission; and

(b) Obtain a passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant has a master's degree.

(4) A district and co-applicant educator may apply for an Emergency Career and Technical Education Teaching License for the holder of a Career and Technical Education Restricted Substitute Teaching License if the district is unable to obtain a Career and Technical Education licensed teacher in any position in an ODE approved Career and Technical Education program lasting more than three consecutive months.

ADMINISTRATIVE RULES

(a) The Career and Technical Education Emergency Teaching License will allow the educator to teach for time beyond the allowed timelines stated in subsection (1) above.

(b) The Executive Director may approve the Career and Technical Education Emergency Teaching License upon proof of the district's emergency.

(5) A district and co-applicant educator who has held the CTE Restricted Substitute Teaching License may be eligible for and may apply for a Career and Technical Education I Teaching License for a position in an ODE-approved Career and Technical Education program related to the applicant's Career and Technical Education endorsement(s) without additional Instructor Appraisal Committee recommendations. Applicants interested in this option should contact ODE to check whether they are eligible to apply for a CTE I Teaching License through this avenue.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 4-2010, f. & cert. ef. 7-15-10

584-042-0090

Transfer of a CTE I Teaching License to Another District

(1) The Career and Technical Education I Teaching License is transferable to another Oregon school district under the following conditions:

(a) The applicant submits an application packet that includes the following:

(A) A signed and dated TSPC application and the appropriate fees;

(B) Evidence the new district has an ODE-approved career and technical education program in the area in which the applicant is licensed;

(C) The district identifies the supervising administrator and the CTE mentor when requesting the transfer of a CTE I Teaching License from another district; and

(D) An affidavit from the new district acknowledging that they have reviewed and support the original CTE professional development plan and they are committed to ensuring the applicant completes the CTE professional development plan.

(b) The application for transfer is submitted no later than seven calendar days from the first day of employment.

(A) Failure to submit a timely application for transfer may result in referral for investigation of Gross Neglect of Duty pursuant to OAR 584-020-0040 for both the licensed educator and the educator's immediate supervisor.

(B) Failure to submit a timely application for transfer may be a basis for denial for further renewal of the CTE I Teaching License or denial of eligibility for the CTE II Teaching License.

(c) The applicant may have to submit an expedited service request if the district needs the applicant to begin work immediately.

(2) The application is incomplete if all of the elements of subsection (1) are not satisfied.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 4-2010, f. & cert. ef. 7-15-10

584-044-0014

Basic School Psychologist

An applicant for the basic school psychologist endorsement must complete the requirements under either subsection (1) or (2) of this section.

(1) Complete an approved school psychologist program verifying completion of:

(a) A master's degree from an approved teacher education institution.

(b) Seventy-five (75) quarter or fifty (50) semester hours of graduate preparation designed to develop competence in:

(A) The cognitive, affective, and developmental foundations of human behavior;

(B) Psychometric techniques, both verbal and non-verbal, employed in individual and group assessment;

(C) Learning problems of school-age children, including exceptional pupils;

(D) Consultation and educational interventions, including behavior management, classroom consultation, communication techniques, intervention strategies, and counseling; and

(E) Clinical practicum, including experience in a public agency serving school-age children and/or youth.

(c) A full-time public school practicum for nine weeks in a public school under the direct supervision of a licensed school psychologist. One year of fulltime successful school psychologist experience in public schools or regionally accredited private schools on a valid state license may be substituted for the practicum required under this subsection.

(2) Demonstrate knowledge of school psychology theory and practice by presenting a minimum score on the commission-approved specialty area content test for School Psychologist and hold a current National School Psychology Certificate awarded by the National Association of School Psychologists.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200

Hist.: TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 3-1988, f. & cert. ef. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 2-1992, f. 5-6-92, cert. ef. 1-15-94; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 4-2010, f. & cert. ef. 7-15-10

584-044-0015

Standard Personnel Service License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted a Standard Personnel Service License for five years.

(2) To be eligible for a Standard Personnel Service License an applicant must:

(a) Provide verification of successful personnel service experience in Oregon schools on a PEER form in the endorsement area while holding a Basic Personnel Service License with that endorsement.

(b) Document three years of one-half time or more experience;

(c) Provide either official transcripts together with a Form C-2, verifying completion of an approved Standard Personnel Service License program, or official transcripts verifying completion of a master's degree from an approved teacher education institution in another state.

(d) Present evidence of knowledge of the laws prohibiting discrimination, if not previously verified by passing the *Protecting Student and Civil Rights in the Educational Environment* test.

(e) Verify completion of academic preparation for one of the standard endorsements outlined in OAR 584-044-0021 through 584-044-0023.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1987, f. & ef. 3-3-87; TS 3-1988, f. & cert. 4-7-88; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 2-1989, f. & cert. ef. 2-16-89; TS 9-1991, f. & cert. ef. 8-7-91; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 4-2010, f. & cert. ef. 7-15-10

584-080-0012

Initial Administrator License (IAL)

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant may be granted an Initial Administrator License.

(2) The Initial Administrator License is valid for three (3) years and may be renewed under the conditions set forth in subsections below.

(3) The Initial Administrator License is valid for school administration at all age or grade levels in any administrative position. This license is also valid for substitute teaching at any level in any specialty. (See, OAR 584-060-0181 for explanation of Substitute Teaching.)

(4) To be eligible for an Initial Administrator License, an applicant must satisfy all of the following provisions within this subsection. The applicant must:

(a) Educator Fitness: Possess the personal qualifications for licensure including attainment of at least eighteen (18) years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Licensed Experience: Have three (3) academic years of experience as a full-time licensed educator on any license appropriate for the assignment in:

(A) A public school or regionally accredited private school in any state or other U.S. jurisdiction; or

(B) In one or more of the following schools in Oregon:

(i) An education service district school;

(ii) A state-operated or state-supported school;

(iii) A federal school;

(iv) A private elementary or secondary school registered by the state Department of Education; or

(v) A private proprietary career school licensed by the superintendent of public instruction.

(c) Master's Degree: Hold a master's or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree;

ADMINISTRATIVE RULES

(d)(A) Approved Administrator Program: Complete, as part of the master's degree or separately, an initial graduate program in school administration at an institution approved for administrator education;

(B) A candidate for initial licensure who has completed an administrator preparation program outside the state of Oregon must:

(i) Have completed at least eighteen (18) semester hours or twenty-seven (27) quarter hours of graduate credit in school administration or educational leadership; and

(ii) Receive a passing score on tests of knowledge of Oregon school law and finance at the conclusion of or in lieu of a course or courses approved by the commission.

(e) Civil Rights: Obtain a passing score on a commission-adopted test of knowledge of U.S. and Oregon civil rights laws and professional ethics. An emergency license will be issued for ninety (90) days during which time the applicant must complete the civil rights requirement; and

(f) Fingerprints: Furnish fingerprints in the manner prescribed by the commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement.)

(5) Renewal: The Initial Administrator License may be renewed up to two (2) times if the applicant makes progress or has made progress toward completion of the Continuing Administrator License by completing at least six (6) semester hours or nine (9) quarter hours of academic credit in a state approved administrative licensure preparation program or its equivalent upon each renewal application. A transcript of the completed coursework is required for renewal.

(6) Reinstatement for Administrator Experience: An applicant may reinstate an expired Initial Administrator License for one (1) three-year period for the purposes of completing the administrative experience requirements for the Continuing Administrator License under the following conditions:

(a) The applicant has completed all requirements for the CAL except for the administrative experience required;

(b) The application includes a request from a district for reinstatement.

(7) Incomplete CAL Programs: Initial Administrator License holders who are unable to complete the academic requirements for the Continuing Administrator License within nine (9) years after the Initial Administrator License was first granted may only take an administrator position upon joint application with an employing district requesting a Restricted Transitional Administrator License.

(8) Licenses issued prior to October 13, 2003: All Initial Administrator Licenses for positions other than a Superintendent issued after January 1, 1999 and prior to and including October 13, 2003 have ten (10) years to complete the requirements of the Continuing Administrator License. Initial Administrator Licenses issued after October 13, 2003, with the exception of Superintendents subject to subsection (9) below, have nine (9) years, or two (2) renewal cycles to complete the requirements of the Continuing Administrator License.

(9) Superintendency on the Initial Administrative License: The Continuing Administrator Licensure program or the equivalent graduate hours in an approved administrator preparation program must be completed within the three (3) years following the next renewal of the Initial Administrator License if the holder of an Initial Administrator License takes a position as a superintendent in Oregon at any time within the life of the Initial Administrator License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 4-2010, f. & cert. ef. 7-15-10

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123-019-0100	4-12-2010	Amend(T)	5-1-2010	123-043-0075	7-1-2010	Amend	8-1-2010
123-021-0020	5-1-2010	Amend	6-1-2010	123-043-0075(T)	7-1-2010	Repeal	8-1-2010
123-022-0070	12-1-2009	Amend	1-1-2010	123-043-0085	12-1-2009	Amend	1-1-2010
123-022-0080	12-1-2009	Amend	1-1-2010	123-043-0085	1-14-2010	Amend(T)	2-1-2010
123-022-0090	12-1-2009	Amend	1-1-2010	123-043-0085	7-1-2010	Amend	8-1-2010
123-022-0100	12-1-2009	Amend	1-1-2010	123-043-0085(T)	7-1-2010	Repeal	8-1-2010
123-022-0110	12-1-2009	Amend	1-1-2010	123-043-0095	12-1-2009	Amend	1-1-2010
123-023-1000	5-1-2010	Am. & Ren.	6-1-2010	123-043-0095	1-14-2010	Amend(T)	2-1-2010
123-023-1100	5-1-2010	Am. & Ren.	6-1-2010	123-043-0102	12-1-2009	Amend	1-1-2010
123-023-1200	5-1-2010	Renumber	6-1-2010	123-043-0102	7-1-2010	Amend	8-1-2010
123-023-1250	5-1-2010	Renumber	6-1-2010	123-043-0102(T)	7-1-2010	Repeal	8-1-2010
123-023-1300	5-1-2010	Renumber	6-1-2010	123-043-0105	12-1-2009	Amend	1-1-2010
123-023-1400	5-1-2010	Am. & Ren.	6-1-2010	123-043-0105	7-1-2010	Amend	8-1-2010
123-023-1500	5-1-2010	Am. & Ren.	6-1-2010	123-043-0105(T)	7-1-2010	Repeal	8-1-2010
123-023-1525	5-1-2010	Renumber	6-1-2010	123-043-0115	12-1-2009	Amend	1-1-2010
123-023-1550	5-1-2010	Am. & Ren.	6-1-2010	123-043-0115	1-14-2010	Amend(T)	2-1-2010
123-023-1600	5-1-2010	Am. & Ren.	6-1-2010	123-049-0005	2-1-2010	Amend	3-1-2010
123-023-1700	5-1-2010	Am. & Ren.	6-1-2010	123-049-0010	2-1-2010	Amend	3-1-2010
123-023-1800	5-1-2010	Am. & Ren.	6-1-2010	123-049-0020	2-1-2010	Amend	3-1-2010

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123-065-4320	6-14-2010	Repeal	7-1-2010	123-065-7700	6-14-2010	Repeal	7-1-2010
123-065-4323	6-14-2010	Repeal	7-1-2010	123-065-8000	6-14-2010	Repeal	7-1-2010
123-065-4325	6-14-2010	Repeal	7-1-2010	123-065-8100	6-14-2010	Repeal	7-1-2010
123-065-4328	6-14-2010	Repeal	7-1-2010	123-065-8200	6-14-2010	Repeal	7-1-2010
123-065-4330	6-14-2010	Repeal	7-1-2010	123-065-8300	6-14-2010	Repeal	7-1-2010
123-065-4340	6-14-2010	Repeal	7-1-2010	123-065-8400	6-14-2010	Repeal	7-1-2010
123-065-4345	6-14-2010	Repeal	7-1-2010	123-070-1000	12-1-2009	Amend	1-1-2010
123-065-4355	6-14-2010	Repeal	7-1-2010	123-070-1000	7-1-2010	Amend	8-1-2010
123-065-4365	6-14-2010	Repeal	7-1-2010	123-070-1100	12-1-2009	Amend	1-1-2010
123-065-4375	6-14-2010	Repeal	7-1-2010	123-070-1100	7-1-2010	Amend	8-1-2010
123-065-4380	6-14-2010	Repeal	7-1-2010	123-070-1150	12-1-2009	Amend	1-1-2010
123-065-4400	6-14-2010	Repeal	7-1-2010	123-070-1200	12-1-2009	Repeal	1-1-2010
123-065-4410	6-14-2010	Repeal	7-1-2010	123-070-1300	12-1-2009	Amend	1-1-2010
123-065-4420	6-14-2010	Repeal	7-1-2010	123-070-1500	12-1-2009	Amend	1-1-2010
123-065-4430	6-14-2010	Repeal	7-1-2010	123-070-1500	7-1-2010	Amend	8-1-2010
123-065-4440	6-14-2010	Repeal	7-1-2010	123-070-1600	12-1-2009	Amend	1-1-2010
123-065-4450	6-14-2010	Repeal	7-1-2010	123-070-1700	12-1-2009	Repeal	1-1-2010
123-065-4460	6-14-2010	Repeal	7-1-2010	123-070-1800	12-1-2009	Amend	1-1-2010
123-065-4470	6-14-2010	Repeal	7-1-2010	123-070-1900	12-1-2009	Amend	1-1-2010
123-065-4480	6-14-2010	Repeal	7-1-2010	123-070-2000	12-1-2009	Repeal	1-1-2010
123-065-4500	6-14-2010	Repeal	7-1-2010	123-070-2100	7-1-2010	Am. & Ren.	8-1-2010
123-065-4510	6-14-2010	Repeal	7-1-2010	123-070-2200	7-1-2010	Am. & Ren.	8-1-2010
123-065-4520	6-14-2010	Repeal	7-1-2010	123-070-2300	12-1-2009	Amend	1-1-2010
123-065-4530	6-14-2010	Repeal	7-1-2010	123-070-2300	7-1-2010	Am. & Ren.	8-1-2010
123-065-4540	6-14-2010	Repeal	7-1-2010	123-070-2400	12-1-2009	Amend	1-1-2010
123-065-4550	6-14-2010	Repeal	7-1-2010	123-070-2400	7-1-2010	Am. & Ren.	8-1-2010
123-065-4560	6-14-2010	Repeal	7-1-2010	123-080-0000	1-1-2010	Amend	2-1-2010
123-065-4565	6-14-2010	Repeal	7-1-2010	123-080-0010	1-1-2010	Amend	2-1-2010
123-065-4570	6-14-2010	Repeal	7-1-2010	123-080-0030	1-1-2010	Amend	2-1-2010
123-065-4580	6-14-2010	Repeal	7-1-2010	123-080-0040	1-1-2010	Amend	2-1-2010
123-065-4590	6-14-2010	Repeal	7-1-2010	123-087-0010	1-1-2010	Amend	2-1-2010
123-065-4600	6-14-2010	Repeal	7-1-2010	123-087-0030	1-1-2010	Amend	2-1-2010
123-065-4610	6-14-2010	Repeal	7-1-2010	123-087-0040	1-1-2010	Repeal	2-1-2010
123-065-4620	6-14-2010	Repeal	7-1-2010	123-090-0000	1-1-2010	Amend	2-1-2010
123-065-4630	6-14-2010	Repeal	7-1-2010	123-090-0010	1-1-2010	Amend	2-1-2010
123-065-4640	6-14-2010	Repeal	7-1-2010	123-090-0030	1-1-2010	Amend	2-1-2010
123-065-4700	6-14-2010	Repeal	7-1-2010	123-090-0040	1-1-2010	Amend	2-1-2010
123-065-4710	6-14-2010	Repeal	7-1-2010	123-090-0060	1-1-2010	Amend	2-1-2010
123-065-4720	6-14-2010	Repeal	7-1-2010	123-125-0000	6-1-2010	Amend	7-1-2010
123-065-4730	6-14-2010	Repeal	7-1-2010	123-125-0020	6-1-2010	Amend	7-1-2010
123-065-4740	6-14-2010	Repeal	7-1-2010	123-125-0040	6-1-2010	Amend	7-1-2010
123-065-4750	6-14-2010	Repeal	7-1-2010	123-135-0000	4-1-2010	Amend	5-1-2010
123-065-4760	6-14-2010	Repeal	7-1-2010	123-135-0010	4-1-2010	Amend	5-1-2010
123-065-4800	6-14-2010	Repeal	7-1-2010	123-135-0020	4-1-2010	Amend	5-1-2010
123-065-4950	6-14-2010	Repeal	7-1-2010	123-135-0030	4-1-2010	Amend	5-1-2010
123-065-4960	6-14-2010	Repeal	7-1-2010	123-135-0040	4-1-2010	Amend	5-1-2010
123-065-4970	6-14-2010	Repeal	7-1-2010	123-135-0050	4-1-2010	Amend	5-1-2010
123-065-4980	6-14-2010	Repeal	7-1-2010	123-135-0060	4-1-2010	Repeal	5-1-2010
123-065-4990	6-14-2010	Repeal	7-1-2010	123-135-0065	4-1-2010	Adopt	5-1-2010
123-065-7000	6-14-2010	Repeal	7-1-2010	123-135-0070	4-1-2010	Repeal	5-1-2010
123-065-7100	6-14-2010	Repeal	7-1-2010	123-135-0080	4-1-2010	Amend	5-1-2010
123-065-7200	6-14-2010	Repeal	7-1-2010	123-135-0087	4-1-2010	Amend	5-1-2010
123-065-7300	6-14-2010	Repeal	7-1-2010	123-135-0090	4-1-2010	Amend	5-1-2010
123-065-7400	6-14-2010	Repeal	7-1-2010	123-135-0100	4-1-2010	Amend	5-1-2010
123-065-7500	6-14-2010	Repeal	7-1-2010	123-135-0110	4-1-2010	Amend	5-1-2010

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123-140-0010	5-21-2010	Amend(T)	7-1-2010	123-500-0010	3-1-2010	Adopt	4-1-2010
123-140-0020	4-1-2010	Amend	5-1-2010	123-500-0015	3-1-2010	Adopt	4-1-2010
123-140-0020	5-21-2010	Amend(T)	7-1-2010	123-500-0020	3-1-2010	Am. & Ren.	4-1-2010
123-140-0030	4-1-2010	Amend	5-1-2010	123-500-0030	3-1-2010	Am. & Ren.	4-1-2010
123-140-0030	5-21-2010	Amend(T)	7-1-2010	123-500-0035	3-1-2010	Adopt	4-1-2010
123-140-0050	4-1-2010	Amend	5-1-2010	123-500-0040	3-1-2010	Am. & Ren.	4-1-2010
123-155-0000	2-1-2010	Amend	3-1-2010	123-500-0045	3-1-2010	Adopt	4-1-2010
123-155-0050	2-1-2010	Amend	3-1-2010	123-500-0050	3-1-2010	Am. & Ren.	4-1-2010
123-155-0100	2-1-2010	Amend	3-1-2010	123-500-0055	3-1-2010	Adopt	4-1-2010
123-155-0150	2-1-2010	Amend	3-1-2010	123-500-0060	3-1-2010	Am. & Ren.	4-1-2010
123-155-0200	2-1-2010	Amend	3-1-2010	123-500-0075	3-1-2010	Adopt	4-1-2010
123-155-0250	2-1-2010	Amend	3-1-2010	123-500-0080	3-1-2010	Adopt	4-1-2010
123-155-0270	2-1-2010	Amend	3-1-2010	123-500-0150	3-1-2010	Adopt	4-1-2010
123-155-0300	2-1-2010	Amend	3-1-2010	123-500-0160	3-1-2010	Adopt	4-1-2010
123-155-0350	2-1-2010	Amend	3-1-2010	123-500-0170	3-1-2010	Adopt	4-1-2010
123-155-0400	2-1-2010	Amend	3-1-2010	123-500-0175	3-1-2010	Adopt	4-1-2010
123-165-0010	1-14-2010	Adopt(T)	2-1-2010	123-650-0001	6-14-2010	Adopt	7-1-2010
123-165-0010	5-1-2010	Adopt	6-1-2010	123-650-0059	6-14-2010	Adopt	7-1-2010
123-165-0010(T)	5-1-2010	Repeal	6-1-2010	123-650-0100	6-14-2010	Adopt	7-1-2010
123-165-0020	1-14-2010	Adopt(T)	2-1-2010	123-650-0500	6-14-2010	Adopt	7-1-2010
123-165-0020	5-1-2010	Adopt	6-1-2010	123-650-0700	6-14-2010	Adopt	7-1-2010
123-165-0020(T)	5-1-2010	Repeal	6-1-2010	123-650-1000	6-14-2010	Adopt	7-1-2010
123-165-0030	1-14-2010	Adopt(T)	2-1-2010	123-650-1100	6-14-2010	Adopt	7-1-2010
123-165-0030	5-1-2010	Adopt	6-1-2010	123-650-1500	6-14-2010	Adopt	7-1-2010
123-165-0030(T)	5-1-2010	Repeal	6-1-2010	123-650-2000	6-14-2010	Adopt	7-1-2010
123-165-0040	1-14-2010	Adopt(T)	2-1-2010	123-650-2100	6-14-2010	Adopt	7-1-2010
123-165-0040	5-1-2010	Adopt	6-1-2010	123-650-2200	6-14-2010	Adopt	7-1-2010
123-165-0040(T)	5-1-2010	Repeal	6-1-2010	123-650-2300	6-14-2010	Adopt	7-1-2010
123-165-0045	1-14-2010	Adopt(T)	2-1-2010	123-650-2400	6-14-2010	Adopt	7-1-2010
123-165-0045	5-1-2010	Adopt	6-1-2010	123-650-2500	6-14-2010	Adopt	7-1-2010
123-165-0045(T)	5-1-2010	Repeal	6-1-2010	123-650-2600	6-14-2010	Adopt	7-1-2010
123-165-0050	1-14-2010	Adopt(T)	2-1-2010	123-650-3000	6-14-2010	Adopt	7-1-2010
123-165-0050	5-1-2010	Adopt	6-1-2010	123-650-3100	6-14-2010	Adopt	7-1-2010
123-165-0050(T)	5-1-2010	Repeal	6-1-2010	123-650-3200	6-14-2010	Adopt	7-1-2010
123-200-0005	5-1-2010	Adopt	6-1-2010	123-650-3300	6-14-2010	Adopt	7-1-2010
123-200-0010	5-1-2010	Adopt	6-1-2010	123-650-3400	6-14-2010	Adopt	7-1-2010
123-200-0020	5-1-2010	Adopt	6-1-2010	123-650-5000	6-14-2010	Adopt	7-1-2010
123-200-0030	5-1-2010	Adopt	6-1-2010	123-650-5100	6-14-2010	Adopt	7-1-2010
123-200-0040	5-1-2010	Adopt	6-1-2010	123-650-5200	6-14-2010	Adopt	7-1-2010
123-200-0050	5-1-2010	Adopt	6-1-2010	123-650-5500	6-14-2010	Adopt	7-1-2010
123-200-0060	5-1-2010	Adopt	6-1-2010	123-650-7000	6-14-2010	Adopt	7-1-2010
123-200-0070	5-1-2010	Adopt	6-1-2010	123-650-7100	6-14-2010	Adopt	7-1-2010
123-200-0080	5-1-2010	Adopt	6-1-2010	123-650-7200	6-14-2010	Adopt	7-1-2010
123-200-0090	5-1-2010	Adopt	6-1-2010	123-650-7300	6-14-2010	Adopt	7-1-2010
123-200-0100	5-1-2010	Adopt	6-1-2010	123-650-7400	6-14-2010	Adopt	7-1-2010
123-200-0120	5-1-2010	Adopt	6-1-2010	123-650-9100	6-14-2010	Adopt	7-1-2010
123-200-0130	5-1-2010	Adopt	6-1-2010	123-650-9300	6-14-2010	Adopt	7-1-2010
123-200-0140	5-1-2010	Adopt	6-1-2010	123-656-0001	6-14-2010	Adopt	7-1-2010
123-200-0150	5-1-2010	Adopt	6-1-2010	123-656-0100	6-14-2010	Adopt	7-1-2010
123-200-0160	5-1-2010	Adopt	6-1-2010	123-656-1000	6-14-2010	Adopt	7-1-2010
123-200-0170	5-1-2010	Adopt	6-1-2010	123-656-1200	6-14-2010	Adopt	7-1-2010
123-200-0180	5-1-2010	Adopt	6-1-2010	123-656-1400	6-14-2010	Adopt	7-1-2010
123-200-0190	5-1-2010	Adopt	6-1-2010	123-656-1600	6-14-2010	Adopt	7-1-2010
123-200-0200	5-1-2010	Adopt	6-1-2010	123-656-2000	6-14-2010	Adopt	7-1-2010
123-500-0000	3-1-2010	Amend	4-1-2010	123-656-2100	6-14-2010	Adopt	7-1-2010

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123-662-0001	6-14-2010	Adopt	7-1-2010	123-674-6000	6-14-2010	Adopt	7-1-2010
123-662-0100	6-14-2010	Adopt	7-1-2010	123-674-6100	6-14-2010	Adopt	7-1-2010
123-662-1000	6-14-2010	Adopt	7-1-2010	123-674-6200	6-14-2010	Adopt	7-1-2010
123-662-1200	6-14-2010	Adopt	7-1-2010	123-674-6300	6-14-2010	Adopt	7-1-2010
123-662-2000	6-14-2010	Adopt	7-1-2010	123-674-6400	6-14-2010	Adopt	7-1-2010
123-662-2500	6-14-2010	Adopt	7-1-2010	123-674-6600	6-14-2010	Adopt	7-1-2010
123-668-0001	6-14-2010	Adopt	7-1-2010	123-674-6610	6-14-2010	Adopt	7-1-2010
123-668-0100	6-14-2010	Adopt	7-1-2010	123-674-6620	6-14-2010	Adopt	7-1-2010
123-668-1000	6-14-2010	Adopt	7-1-2010	123-674-6630	6-14-2010	Adopt	7-1-2010
123-668-1100	6-14-2010	Adopt	7-1-2010	123-674-6880	6-14-2010	Adopt	7-1-2010
123-668-1300	6-14-2010	Adopt	7-1-2010	123-674-7200	6-14-2010	Adopt	7-1-2010
123-668-1400	6-14-2010	Adopt	7-1-2010	123-674-7210	6-14-2010	Adopt	7-1-2010
123-668-1600	6-14-2010	Adopt	7-1-2010	123-674-7220	6-14-2010	Adopt	7-1-2010
123-668-1700	6-14-2010	Adopt	7-1-2010	123-674-7230	6-14-2010	Adopt	7-1-2010
123-668-2000	6-14-2010	Adopt	7-1-2010	123-674-7240	6-14-2010	Adopt	7-1-2010
123-668-2100	6-14-2010	Adopt	7-1-2010	123-674-7250	6-14-2010	Adopt	7-1-2010
123-668-2200	6-14-2010	Adopt	7-1-2010	123-674-8000	6-14-2010	Adopt	7-1-2010
123-668-2300	6-14-2010	Adopt	7-1-2010	123-674-8100	6-14-2010	Adopt	7-1-2010
123-668-2400	6-14-2010	Adopt	7-1-2010	123-674-8200	6-14-2010	Adopt	7-1-2010
123-668-2500	6-14-2010	Adopt	7-1-2010	123-674-8300	6-14-2010	Adopt	7-1-2010
123-674-0001	6-14-2010	Adopt	7-1-2010	123-680-0001	6-14-2010	Adopt	7-1-2010
123-674-0100	6-14-2010	Adopt	7-1-2010	123-680-1000	6-14-2010	Adopt	7-1-2010
123-674-0200	6-14-2010	Adopt	7-1-2010	123-680-1200	6-14-2010	Adopt	7-1-2010
123-674-0200	7-1-2010	Amend	8-1-2010	123-680-1400	6-14-2010	Adopt	7-1-2010
123-674-0500	6-14-2010	Adopt	7-1-2010	123-680-1600	6-14-2010	Adopt	7-1-2010
123-674-0600	6-14-2010	Adopt	7-1-2010	123-690-0001	6-14-2010	Adopt	7-1-2010
123-674-0700	6-14-2010	Adopt	7-1-2010	123-690-0100	6-14-2010	Adopt	7-1-2010
123-674-1000	6-14-2010	Adopt	7-1-2010	123-690-0500	6-14-2010	Adopt	7-1-2010
123-674-1100	6-14-2010	Adopt	7-1-2010	123-690-2000	6-14-2010	Adopt	7-1-2010
123-674-1200	6-14-2010	Adopt	7-1-2010	123-690-2100	6-14-2010	Adopt	7-1-2010
123-674-1300	6-14-2010	Adopt	7-1-2010	123-690-2300	6-14-2010	Adopt	7-1-2010
123-674-1400	6-14-2010	Adopt	7-1-2010	123-690-2400	6-14-2010	Adopt	7-1-2010
123-674-1500	6-14-2010	Adopt	7-1-2010	123-690-4000	6-14-2010	Adopt	7-1-2010
123-674-1600	6-14-2010	Adopt	7-1-2010	123-690-4200	6-14-2010	Adopt	7-1-2010
123-674-1700	6-14-2010	Adopt	7-1-2010	123-690-4400	6-14-2010	Adopt	7-1-2010
123-674-2000	6-14-2010	Adopt	7-1-2010	123-690-4600	6-14-2010	Adopt	7-1-2010
123-674-2100	6-14-2010	Adopt	7-1-2010	123-690-5000	6-14-2010	Adopt	7-1-2010
123-674-2300	6-14-2010	Adopt	7-1-2010	123-690-5200	6-14-2010	Adopt	7-1-2010
123-674-2500	6-14-2010	Adopt	7-1-2010	123-690-6000	6-14-2010	Adopt	7-1-2010
123-674-3000	6-14-2010	Adopt	7-1-2010	123-690-6200	6-14-2010	Adopt	7-1-2010
123-674-3100	6-14-2010	Adopt	7-1-2010	123-690-8000	6-14-2010	Adopt	7-1-2010
123-674-3200	6-14-2010	Adopt	7-1-2010	123-690-8100	6-14-2010	Adopt	7-1-2010
123-674-3500	6-14-2010	Adopt	7-1-2010	123-690-8500	6-14-2010	Adopt	7-1-2010
123-674-3700	6-14-2010	Adopt	7-1-2010	125-045-0210	11-19-2009	Amend	1-1-2010
123-674-4000	6-14-2010	Adopt	7-1-2010	125-045-0215	11-19-2009	Amend	1-1-2010
123-674-4100	6-14-2010	Adopt	7-1-2010	125-045-0225	11-19-2009	Amend	1-1-2010
123-674-4200	6-14-2010	Adopt	7-1-2010	125-246-0110	1-1-2010	Amend	2-1-2010
123-674-4300	6-14-2010	Adopt	7-1-2010	125-246-0130	1-1-2010	Amend	2-1-2010
123-674-4600	6-14-2010	Adopt	7-1-2010	125-246-0150	1-1-2010	Amend	2-1-2010
123-674-4800	6-14-2010	Adopt	7-1-2010	125-246-0165	1-1-2010	Adopt	2-1-2010
123-674-5000	6-14-2010	Adopt	7-1-2010	125-246-0170	1-1-2010	Amend	2-1-2010
123-674-5100	6-14-2010	Adopt	7-1-2010	125-246-0200	1-1-2010	Amend	2-1-2010
123-674-5200	6-14-2010	Adopt	7-1-2010	125-246-0210	1-1-2010	Amend	2-1-2010
123-674-5300	6-14-2010	Adopt	7-1-2010	125-246-0220	1-1-2010	Amend	2-1-2010
123-674-5400	6-14-2010	Adopt	7-1-2010	125-246-0310	1-1-2010	Amend	2-1-2010

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125-246-0314	1-1-2010	Adopt	2-1-2010	125-248-0300	1-1-2010	Amend	2-1-2010
125-246-0330	1-1-2010	Amend	2-1-2010	125-248-0310	1-1-2010	Amend	2-1-2010
125-246-0333	1-1-2010	Amend	2-1-2010	125-248-0330	1-1-2010	Amend	2-1-2010
125-246-0335	1-1-2010	Amend	2-1-2010	125-248-0340	1-1-2010	Amend	2-1-2010
125-246-0345	1-1-2010	Amend	2-1-2010	125-249-0120	1-1-2010	Amend	2-1-2010
125-246-0351	1-1-2010	Amend	2-1-2010	125-249-0130	1-1-2010	Amend	2-1-2010
125-246-0352	1-1-2010	Repeal	2-1-2010	125-249-0145	1-1-2010	Adopt	2-1-2010
125-246-0360	1-1-2010	Amend	2-1-2010	125-249-0200	1-1-2010	Amend	2-1-2010
125-246-0365	1-1-2010	Amend	2-1-2010	125-249-0230	1-1-2010	Amend	2-1-2010
125-246-0550	1-1-2010	Repeal	2-1-2010	125-249-0260	1-1-2010	Amend	2-1-2010
125-246-0560	1-1-2010	Amend	2-1-2010	125-249-0270	1-1-2010	Amend	2-1-2010
125-246-0570	1-1-2010	Amend	2-1-2010	125-249-0280	1-1-2010	Amend	2-1-2010
125-246-0575	1-1-2010	Repeal	2-1-2010	125-249-0300	1-1-2010	Amend	2-1-2010
125-246-0576	1-1-2010	Amend	2-1-2010	125-249-0330	1-1-2010	Amend	2-1-2010
125-246-0621	1-1-2010	Adopt	2-1-2010	125-249-0350	1-1-2010	Amend	2-1-2010
125-246-0635	1-1-2010	Amend	2-1-2010	125-249-0360	1-1-2010	Amend	2-1-2010
125-247-0005	1-1-2010	Repeal	2-1-2010	125-249-0370	1-1-2010	Amend	2-1-2010
125-247-0110	1-1-2010	Adopt	2-1-2010	125-249-0390	1-1-2010	Amend	2-1-2010
125-247-0200	1-1-2010	Amend	2-1-2010	125-249-0420	1-1-2010	Amend	2-1-2010
125-247-0255	1-1-2010	Amend	2-1-2010	125-249-0430	1-1-2010	Amend	2-1-2010
125-247-0256	1-1-2010	Repeal	2-1-2010	125-249-0440	1-1-2010	Amend	2-1-2010
125-247-0260	1-1-2010	Amend	2-1-2010	125-249-0450	1-1-2010	Amend	2-1-2010
125-247-0261	1-1-2010	Repeal	2-1-2010	125-249-0620	1-1-2010	Amend	2-1-2010
125-247-0270	1-1-2010	Amend	2-1-2010	125-249-0640	1-1-2010	Amend	2-1-2010
125-247-0275	1-1-2010	Amend	2-1-2010	125-249-0645	1-1-2010	Amend	2-1-2010
125-247-0280	1-1-2010	Amend	2-1-2010	125-249-0650	1-1-2010	Amend	2-1-2010
125-247-0287	1-1-2010	Amend	2-1-2010	125-249-0660	1-1-2010	Amend	2-1-2010
125-247-0288	1-1-2010	Amend	2-1-2010	125-249-0680	1-1-2010	Amend	2-1-2010
125-247-0296	1-1-2010	Amend	2-1-2010	125-249-0800	1-1-2010	Amend	2-1-2010
125-247-0305	1-1-2010	Amend	2-1-2010	125-249-0810	1-1-2010	Amend	2-1-2010
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125-247-0320	1-1-2010	Amend	2-1-2010	125-249-0820	1-1-2010	Amend	2-1-2010
125-247-0340	1-1-2010	Amend	2-1-2010	125-249-0860	1-1-2010	Amend	2-1-2010
125-247-0470	1-1-2010	Amend	2-1-2010	125-249-0870	1-1-2010	Amend	2-1-2010
125-247-0500	1-1-2010	Amend	2-1-2010	125-249-0900	1-1-2010	Amend	2-1-2010
125-247-0550	1-1-2010	Amend	2-1-2010	125-700-0015	6-29-2010	Amend(T)	8-1-2010
125-247-0600	1-1-2010	Amend	2-1-2010	125-700-0055	6-29-2010	Amend(T)	8-1-2010
125-247-0610	1-1-2010	Amend	2-1-2010	137-045-0010	1-1-2010	Amend	1-1-2010
125-247-0630	1-1-2010	Amend	2-1-2010	137-045-0015	1-1-2010	Amend	1-1-2010
125-247-0640	1-1-2010	Amend	2-1-2010	137-045-0020	1-1-2010	Amend	1-1-2010
125-247-0660	1-1-2010	Amend	2-1-2010	137-045-0030	1-1-2010	Amend	1-1-2010
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125-247-0710	1-1-2010	Amend	2-1-2010	137-045-0052	1-1-2010	Amend	1-1-2010
125-247-0720	1-1-2010	Amend	2-1-2010	137-045-0060	1-1-2010	Amend	1-1-2010
125-247-0740	1-1-2010	Amend	2-1-2010	137-045-0070	1-1-2010	Amend	1-1-2010
125-247-0750	1-1-2010	Amend	2-1-2010	137-046-0110	1-1-2010	Amend	1-1-2010
125-247-0770	1-1-2010	Repeal	2-1-2010	137-046-0210	1-1-2010	Amend	1-1-2010
125-247-0800	1-1-2010	Repeal	2-1-2010	137-047-0250	1-1-2010	Amend	1-1-2010
125-248-0130	1-1-2010	Amend	2-1-2010	137-047-0255	1-1-2010	Amend	1-1-2010
125-248-0200	1-1-2010	Amend	2-1-2010	137-047-0260	1-1-2010	Amend	1-1-2010
125-248-0210	1-1-2010	Amend	2-1-2010	137-047-0261	1-1-2010	Amend	1-1-2010
125-248-0220	1-1-2010	Amend	2-1-2010	137-047-0262	1-1-2010	Amend	1-1-2010
125-248-0230	1-1-2010	Amend	2-1-2010	137-047-0263	1-1-2010	Amend	1-1-2010
125-248-0240	1-1-2010	Amend	2-1-2010	137-047-0270	1-1-2010	Amend	1-1-2010

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137-047-0300	1-1-2010	Amend	1-1-2010	137-050-0465	1-4-2010	Repeal	1-1-2010
137-047-0310	1-1-2010	Amend	1-1-2010	137-050-0475	1-4-2010	Repeal	1-1-2010
137-047-0470	1-1-2010	Amend	1-1-2010	137-050-0485	1-4-2010	Repeal	1-1-2010
137-047-0550	1-1-2010	Amend	1-1-2010	137-050-0490	1-4-2010	Repeal	1-1-2010
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137-047-0640	1-1-2010	Amend	1-1-2010	137-050-0700	2-12-2010	Amend(T)	3-1-2010
137-047-0800	1-1-2010	Amend	1-1-2010	137-050-0700	7-1-2010	Amend	8-1-2010
137-048-0130	1-1-2010	Amend	1-1-2010	137-050-0700(T)	7-1-2010	Amend	8-1-2010
137-048-0200	1-1-2010	Amend	1-1-2010	137-050-0710	1-4-2010	Adopt	1-1-2010
137-048-0210	1-1-2010	Amend	1-1-2010	137-050-0710	2-12-2010	Amend(T)	3-1-2010
137-048-0220	1-1-2010	Amend	1-1-2010	137-050-0710	7-1-2010	Amend	8-1-2010
137-048-0250	1-1-2010	Amend	1-1-2010	137-050-0710(T)	7-1-2010	Amend	8-1-2010
137-048-0260	1-1-2010	Amend	1-1-2010	137-050-0715	1-4-2010	Adopt	1-1-2010
137-048-0300	1-1-2010	Amend	1-1-2010	137-050-0715	2-12-2010	Amend(T)	3-1-2010
137-048-0310	1-1-2010	Amend	1-1-2010	137-050-0715	7-1-2010	Amend	8-1-2010
137-048-0320	1-1-2010	Amend	1-1-2010	137-050-0715(T)	7-1-2010	Amend	8-1-2010
137-049-0150	1-1-2010	Amend	1-1-2010	137-050-0720	1-4-2010	Adopt	1-1-2010
137-049-0200	1-1-2010	Amend	1-1-2010	137-050-0725	1-4-2010	Adopt	1-1-2010
137-049-0210	1-1-2010	Amend	1-1-2010	137-050-0730	1-4-2010	Adopt	1-1-2010
137-049-0220	1-1-2010	Amend	1-1-2010	137-050-0730	7-1-2010	Amend	8-1-2010
137-049-0260	1-1-2010	Amend	1-1-2010	137-050-0735	1-4-2010	Adopt	1-1-2010
137-049-0270	1-1-2010	Amend	1-1-2010	137-050-0740	1-4-2010	Adopt	1-1-2010
137-049-0290	1-1-2010	Amend	1-1-2010	137-050-0745	1-4-2010	Adopt	1-1-2010
137-049-0320	1-1-2010	Amend	1-1-2010	137-050-0750	1-4-2010	Adopt	1-1-2010
137-049-0330	1-1-2010	Amend	1-1-2010	137-050-0755	1-4-2010	Adopt	1-1-2010
137-049-0350	1-1-2010	Amend	1-1-2010	137-050-0760	1-4-2010	Adopt(T)	1-1-2010
137-049-0360	1-1-2010	Amend	1-1-2010	137-050-0760	1-8-2010	Amend(T)	2-1-2010
137-049-0390	1-1-2010	Amend	1-1-2010	137-050-0760	2-12-2010	Adopt(T)	3-1-2010
137-049-0400	1-1-2010	Amend	1-1-2010	137-050-0760	7-1-2010	Adopt	8-1-2010
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137-049-0440	1-1-2010	Amend	1-1-2010	137-050-0760(T)	2-12-2010	Suspend	3-1-2010
137-049-0620	1-1-2010	Amend	1-1-2010	137-050-0760(T)	7-1-2010	Amend	8-1-2010
137-049-0645	1-1-2010	Amend	1-1-2010	137-050-0765	1-4-2010	Adopt	1-1-2010
137-049-0650	1-1-2010	Amend	1-1-2010	137-055-1020	1-4-2010	Amend	2-1-2010
137-049-0670	1-1-2010	Amend	1-1-2010	137-055-1070	1-4-2010	Amend(T)	2-1-2010
137-049-0680	1-1-2010	Amend	1-1-2010	137-055-1070	4-1-2010	Amend	5-1-2010
137-049-0800	1-1-2010	Amend	1-1-2010	137-055-1070(T)	4-1-2010	Repeal	5-1-2010
137-049-0815	1-1-2010	Amend	1-1-2010	137-055-1090	1-4-2010	Amend	2-1-2010
137-049-0820	1-1-2010	Amend	1-1-2010	137-055-1120	1-4-2010	Amend	2-1-2010
137-049-0860	1-1-2010	Amend	1-1-2010	137-055-1140	1-4-2010	Amend	2-1-2010
137-050-0320	1-4-2010	Repeal	1-1-2010	137-055-1145	1-4-2010	Amend	2-1-2010
137-050-0330	1-4-2010	Repeal	1-1-2010	137-055-1160	9-1-2010	Amend(T)	8-1-2010
137-050-0333	1-4-2010	Repeal	1-1-2010	137-055-2160	1-4-2010	Amend(T)	2-1-2010
137-050-0335	1-4-2010	Repeal	1-1-2010	137-055-2160	7-1-2010	Amend	8-1-2010
137-050-0340	1-4-2010	Repeal	1-1-2010	137-055-2160(T)	7-1-2010	Amend	8-1-2010
137-050-0350	1-4-2010	Repeal	1-1-2010	137-055-2360	1-4-2010	Amend	2-1-2010
137-050-0360	1-4-2010	Repeal	1-1-2010	137-055-2380	1-4-2010	Amend	2-1-2010
137-050-0370	1-4-2010	Repeal	1-1-2010	137-055-3020	1-4-2010	Amend	2-1-2010
137-050-0390	1-4-2010	Repeal	1-1-2010	137-055-3080	1-4-2010	Amend	2-1-2010
137-050-0400	1-4-2010	Repeal	1-1-2010	137-055-3220	1-4-2010	Amend	2-1-2010
137-050-0405	1-4-2010	Repeal	1-1-2010	137-055-3260	1-4-2010	Amend	2-1-2010
137-050-0410	1-4-2010	Repeal	1-1-2010	137-055-3300	1-4-2010	Amend	2-1-2010
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137-050-0430	1-4-2010	Repeal	1-1-2010	137-055-3340	1-12-2010	Amend(T)	2-1-2010
137-050-0450	1-4-2010	Repeal	1-1-2010	137-055-3340	4-1-2010	Amend	5-1-2010

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137-055-3340(T)	4-1-2010	Repeal	5-1-2010	141-085-0700	1-1-2010	Amend	1-1-2010
137-055-3400	1-4-2010	Amend	2-1-2010	141-085-0705	1-1-2010	Amend	1-1-2010
137-055-3420	1-4-2010	Amend	2-1-2010	141-085-0720	1-1-2010	Amend	1-1-2010
137-055-3430	7-1-2010	Amend(T)	8-1-2010	141-085-0725	1-1-2010	Amend	1-1-2010
137-055-3435	1-4-2010	Adopt	2-1-2010	141-085-0730	1-1-2010	Amend	1-1-2010
137-055-3660	1-4-2010	Amend	2-1-2010	141-085-0735	1-1-2010	Amend	1-1-2010
137-055-4210	1-4-2010	Adopt	2-1-2010	141-085-0745	1-1-2010	Amend	1-1-2010
137-055-4420	1-4-2010	Amend	2-1-2010	141-085-0750	1-1-2010	Amend	1-1-2010
137-055-4450	1-4-2010	Amend	2-1-2010	141-089-0095	1-1-2010	Adopt	1-1-2010
137-055-4455	1-4-2010	Amend	2-1-2010	141-089-0350	1-1-2010	Repeal	1-1-2010
137-055-4620	1-4-2010	Amend	2-1-2010	141-089-0355	1-1-2010	Repeal	1-1-2010
137-055-4640	1-4-2010	Amend	2-1-2010	141-089-0360	1-1-2010	Repeal	1-1-2010
137-055-5110	1-4-2010	Amend	2-1-2010	141-089-0365	1-1-2010	Repeal	1-1-2010
137-055-5220	1-4-2010	Amend	2-1-2010	141-089-0370	1-1-2010	Repeal	1-1-2010
137-055-6022	1-4-2010	Amend	2-1-2010	141-089-0375	1-1-2010	Repeal	1-1-2010
137-055-6024	1-4-2010	Amend	2-1-2010	141-089-0380	1-1-2010	Repeal	1-1-2010
137-055-6260	1-4-2010	Amend	2-1-2010	141-089-0385	1-1-2010	Repeal	1-1-2010
137-060-0110	3-12-2010	Amend	4-1-2010	141-089-0390	1-1-2010	Repeal	1-1-2010
137-060-0120	3-12-2010	Amend	4-1-2010	141-102-0000	4-1-2010	Amend	4-1-2010
137-060-0130	3-12-2010	Amend	4-1-2010	141-102-0010	4-1-2010	Amend	4-1-2010
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137-060-0220	3-12-2010	Amend	4-1-2010	141-102-0040	4-1-2010	Amend	4-1-2010
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137-060-0330	3-12-2010	Amend	4-1-2010	141-142-0030	12-15-2009	Adopt	1-1-2010
137-060-0350	3-12-2010	Amend	4-1-2010	141-142-0035	12-15-2009	Adopt	1-1-2010
137-060-0410	3-12-2010	Amend	4-1-2010	141-142-0040	12-15-2009	Adopt	1-1-2010
137-060-0420	3-12-2010	Amend	4-1-2010	150-118.160-(B)	2-19-2010	Amend(T)	4-1-2010
137-060-0430	3-12-2010	Amend	4-1-2010	150-118.225	1-1-2010	Amend	2-1-2010
137-060-0450	3-12-2010	Amend	4-1-2010	150-118.NOTE	5-7-2010	Adopt(T)	6-1-2010
137-105-0050	4-19-2010	Adopt(T)	6-1-2010	150-294.175(2)-(B)	3-9-2010	Amend(T)	4-1-2010
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137-105-0050(T)	6-30-2010	Repeal	8-1-2010	150-305.100-(C)(T)	3-19-2010	Repeal	4-1-2010
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141-085-0510	1-1-2010	Amend	1-1-2010	150-305.220(2)	1-1-2010	Amend	2-1-2010
141-085-0515	1-1-2010	Amend	1-1-2010	150-305.290	1-1-2010	Repeal	2-1-2010
141-085-0530	1-1-2010	Amend	1-1-2010	150-306.126(2)	1-1-2010	Amend	2-1-2010
141-085-0534	1-1-2010	Adopt	1-1-2010	150-307.250(1)(b)	1-1-2010	Am. & Ren.	2-1-2010
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141-085-0545	1-1-2010	Amend	1-1-2010	150-307.330	1-1-2010	Amend	2-1-2010
141-085-0550	1-1-2010	Amend	1-1-2010	150-307.547	1-1-2010	Adopt	2-1-2010
141-085-0555	1-1-2010	Amend	1-1-2010	150-308.875-(A)	1-1-2010	Amend	2-1-2010
141-085-0565	1-1-2010	Amend	1-1-2010	150-309.100-(D)	1-1-2010	Adopt	2-1-2010
141-085-0570	1-1-2010	Am. & Ren.	1-1-2010	150-311.668(1)(a)-(A)	1-1-2010	Amend	2-1-2010
141-085-0575	1-1-2010	Amend	1-1-2010	150-311.668(1)(a)-(B)	1-1-2010	Amend	2-1-2010
141-085-0585	1-1-2010	Amend	1-1-2010	150-311.688	1-1-2010	Amend	2-1-2010
141-085-0590	1-1-2010	Amend	1-1-2010	150-311.689	1-1-2010	Amend	2-1-2010
141-085-0665	1-1-2010	Amend	1-1-2010	150-311.691	1-1-2010	Amend	2-1-2010
141-085-0670	1-1-2010	Repeal	1-1-2010	150-311.706	1-1-2010	Amend	2-1-2010
141-085-0675	1-1-2010	Amend	1-1-2010	150-314.280-(N)	1-1-2010	Amend	2-1-2010
141-085-0680	1-1-2010	Amend	1-1-2010	150-314.610(4)	1-1-2010	Repeal	2-1-2010
141-085-0685	1-1-2010	Amend	1-1-2010	150-315.204-(A)	1-1-2010	Amend	2-1-2010

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150-315.262	1-1-2010	Amend	2-1-2010	161-015-0010	2-1-2010	Amend(T)	3-1-2010
150-317.090	2-19-2010	Amend	4-1-2010	161-015-0010	4-23-2010	Amend	6-1-2010
150-317.097	1-1-2010	Amend	2-1-2010	161-015-0010(T)	4-23-2010	Repeal	6-1-2010
150-317.326	1-1-2010	Repeal	2-1-2010	161-015-0025	2-1-2010	Amend(T)	3-1-2010
150-323.500(9)	1-1-2010	Adopt	2-1-2010	161-015-0025	4-23-2010	Amend	6-1-2010
150-323.500(9)	6-30-2010	Amend(T)	7-1-2010	161-015-0025(T)	4-23-2010	Repeal	6-1-2010
150-323.500(9)(T)	1-1-2010	Repeal	2-1-2010	161-015-0030	2-1-2010	Amend(T)	3-1-2010
150-358.505	1-1-2010	Adopt	2-1-2010	161-015-0030	4-23-2010	Amend	6-1-2010
160-001-0000	2-1-2010	Amend	3-1-2010	161-015-0030(T)	4-23-2010	Repeal	6-1-2010
160-005-0008	1-1-2010	Adopt	2-1-2010	161-020-0005	2-1-2010	Amend(T)	3-1-2010
160-010-0010	7-1-2010	Amend	8-1-2010	161-020-0005	4-23-2010	Amend	6-1-2010
160-010-0013	7-1-2010	Amend	8-1-2010	161-020-0005(T)	4-23-2010	Repeal	6-1-2010
160-010-0014	7-1-2010	Amend	8-1-2010	161-020-0110	2-1-2010	Amend(T)	3-1-2010
160-010-0200	1-1-2010	Amend	2-1-2010	161-020-0110	4-23-2010	Amend	6-1-2010
160-010-0210	1-1-2010	Adopt	2-1-2010	161-020-0110(T)	4-23-2010	Repeal	6-1-2010
160-010-0220	1-1-2010	Adopt	2-1-2010	161-020-0130	2-1-2010	Amend(T)	3-1-2010
160-010-0230	1-1-2010	Adopt	2-1-2010	161-020-0130	4-23-2010	Amend	6-1-2010
160-010-0240	1-1-2010	Adopt	2-1-2010	161-020-0130(T)	4-23-2010	Repeal	6-1-2010
160-040-0103	1-1-2010	Amend	2-1-2010	161-020-0150	2-1-2010	Amend(T)	3-1-2010
160-040-0104	1-1-2010	Amend	2-1-2010	161-020-0150	4-23-2010	Amend	6-1-2010
160-040-0311	1-1-2010	Amend	2-1-2010	161-020-0150(T)	4-23-2010	Repeal	6-1-2010
160-040-0507	1-1-2010	Adopt	2-1-2010	161-025-0025	2-1-2010	Amend(T)	3-1-2010
160-050-0140	2-27-2010	Amend(T)	3-1-2010	161-025-0025	4-23-2010	Amend	6-1-2010
160-050-0140	4-2-2010	Amend	5-1-2010	161-025-0025(T)	4-23-2010	Repeal	6-1-2010
160-050-0140(T)	4-2-2010	Repeal	5-1-2010	161-025-0030	2-1-2010	Amend(T)	3-1-2010
160-050-0215	2-27-2010	Amend(T)	3-1-2010	161-025-0030	4-23-2010	Amend	6-1-2010
160-050-0215	4-2-2010	Amend	5-1-2010	161-025-0030(T)	4-23-2010	Repeal	6-1-2010
160-050-0215(T)	4-2-2010	Repeal	5-1-2010	161-025-0060	1-1-2010	Amend(T)	1-1-2010
160-100-0040	1-1-2010	Amend	2-1-2010	161-025-0060	4-23-2010	Amend	6-1-2010
160-100-0040	5-3-2010	Amend	6-1-2010	161-025-0060(T)	4-23-2010	Repeal	6-1-2010
160-100-0100	2-3-2010	Amend	3-1-2010	161-030-0000	2-1-2010	Amend(T)	3-1-2010
160-100-0100	7-1-2010	Amend(T)	7-1-2010	161-030-0000	4-23-2010	Amend	6-1-2010
160-100-0110	7-1-2010	Amend(T)	7-1-2010	161-030-0000(T)	4-23-2010	Repeal	6-1-2010
160-100-0120	7-1-2010	Amend(T)	7-1-2010	161-050-0000	2-1-2010	Amend(T)	3-1-2010
160-100-0301	3-1-2010	Adopt	4-1-2010	161-050-0000	4-23-2010	Amend	6-1-2010
160-100-0400	1-1-2010	Amend	2-1-2010	161-050-0000(T)	4-23-2010	Repeal	6-1-2010
160-100-0610	1-1-2010	Amend	2-1-2010	161-050-0050	2-1-2010	Amend(T)	3-1-2010
160-100-0700	1-1-2010	Adopt	2-1-2010	161-050-0050	4-23-2010	Amend	6-1-2010
160-100-1110	6-1-2010	Amend	7-1-2010	161-050-0050(T)	4-23-2010	Repeal	6-1-2010
161-002-0000	1-1-2010	Amend(T)	1-1-2010	162-010-0000	4-1-2010	Amend	5-1-2010
161-002-0000	4-23-2010	Amend	6-1-2010	162-010-0020	4-1-2010	Amend	5-1-2010
161-002-0000(T)	4-23-2010	Repeal	6-1-2010	162-010-0030	4-1-2010	Amend	5-1-2010
161-010-0010	2-1-2010	Amend(T)	3-1-2010	162-010-0050	4-1-2010	Amend	5-1-2010
161-010-0010	4-23-2010	Amend	6-1-2010	162-010-0130	4-1-2010	Amend	5-1-2010
161-010-0010(T)	4-23-2010	Repeal	6-1-2010	162-010-0150	4-1-2010	Amend	5-1-2010
161-010-0020	2-1-2010	Amend(T)	3-1-2010	162-010-0200	4-1-2010	Amend	5-1-2010
161-010-0020	4-23-2010	Amend	6-1-2010	162-010-0230	4-1-2010	Amend	5-1-2010
161-010-0020(T)	4-23-2010	Repeal	6-1-2010	162-010-0240	4-1-2010	Amend	5-1-2010
161-010-0055	2-1-2010	Suspend	3-1-2010	162-010-0270	4-1-2010	Amend	5-1-2010
161-010-0055	4-23-2010	Repeal	6-1-2010	162-010-0310	4-1-2010	Amend	5-1-2010
161-010-0085	2-1-2010	Amend(T)	3-1-2010	162-010-0316	4-1-2010	Adopt	5-1-2010
161-010-0085	4-23-2010	Amend	6-1-2010	162-010-0330	4-1-2010	Amend	5-1-2010
161-010-0085(T)	4-23-2010	Repeal	6-1-2010	162-040-0000	4-1-2010	Renumber	5-1-2010
161-015-0000	2-1-2010	Amend(T)	3-1-2010	162-040-0001	4-1-2010	Adopt	5-1-2010
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162-040-0065	4-1-2010	Amend	5-1-2010	167-001-0605	7-7-2010	Amend	8-1-2010
162-040-0110	4-1-2010	Amend	5-1-2010	170-040-0110	11-19-2009	Adopt	1-1-2010
162-040-0115	4-1-2010	Amend	5-1-2010	170-061-0000	2-2-2010	Amend	3-1-2010
162-040-0130	4-1-2010	Amend	5-1-2010	170-061-0015	1-15-2010	Amend	2-1-2010
162-040-0135	4-1-2010	Amend	5-1-2010	170-061-0015	1-26-2010	Amend(T)	3-1-2010
162-040-0136	4-1-2010	Adopt	5-1-2010	170-061-0015	7-1-2010	Amend(T)	7-1-2010
162-040-0148	4-1-2010	Amend	5-1-2010	170-061-0015(T)	1-15-2010	Repeal	2-1-2010
162-040-0160	4-1-2010	Amend	5-1-2010	170-061-0015(T)	7-1-2010	Suspend	7-1-2010
165-001-0015	12-31-2009	Amend	2-1-2010	170-063-0000	1-15-2010	Amend	2-1-2010
165-001-0025	12-31-2009	Amend	2-1-2010	170-063-0000(T)	1-15-2010	Repeal	2-1-2010
165-001-0035	12-31-2009	Amend	2-1-2010	173-001-0005	3-25-2010	Amend(T)	5-1-2010
165-001-0040	12-31-2009	Amend	2-1-2010	173-001-0010	3-25-2010	Amend(T)	5-1-2010
165-001-0045	12-31-2009	Amend	2-1-2010	173-001-0015	3-25-2010	Amend(T)	5-1-2010
165-001-0050	12-31-2009	Amend	2-1-2010	173-001-0020	3-25-2010	Adopt(T)	5-1-2010
165-001-0055	12-31-2009	Amend	2-1-2010	173-005-0000	3-25-2010	Amend(T)	5-1-2010
165-001-0065	12-31-2009	Repeal	2-1-2010	173-005-0005	3-25-2010	Adopt(T)	5-1-2010
165-001-0080	12-31-2009	Amend	2-1-2010	173-006-0000	3-25-2010	Amend(T)	5-1-2010
165-002-0010	12-31-2009	Amend	2-1-2010	173-006-0005	3-25-2010	Amend(T)	5-1-2010
165-002-0020	12-31-2009	Amend	2-1-2010	173-007-0000	3-25-2010	Amend(T)	5-1-2010
165-005-0130	12-31-2009	Amend	2-1-2010	173-007-0005	3-25-2010	Amend(T)	5-1-2010
165-005-0160	2-26-2010	Adopt	4-1-2010	173-008-0000	3-25-2010	Amend(T)	5-1-2010
165-007-0035	12-31-2009	Amend	2-1-2010	173-008-0005	3-25-2010	Amend(T)	5-1-2010
165-007-0290	12-31-2009	Amend	2-1-2010	173-008-0010	3-25-2010	Amend(T)	5-1-2010
165-007-0300	12-4-2009	Adopt	1-1-2010	173-009-0000	3-25-2010	Amend(T)	5-1-2010
165-007-0310	12-31-2009	Adopt	2-1-2010	173-009-0005	3-25-2010	Amend(T)	5-1-2010
165-007-2011	2-26-2010	Adopt(T)	4-1-2010	173-009-0010	3-25-2010	Amend(T)	5-1-2010
165-010-0005	12-31-2009	Amend	2-1-2010	173-009-0015	3-25-2010	Amend(T)	5-1-2010
165-010-0120	12-31-2009	Repeal	2-1-2010	173-010-0000	3-25-2010	Amend(T)	5-1-2010
165-012-0005	12-31-2009	Amend	2-1-2010	173-010-0025	3-25-2010	Amend(T)	5-1-2010
165-012-0005	4-22-2010	Amend	6-1-2010	173-011-0000	3-25-2010	Amend(T)	5-1-2010
165-012-0050	12-31-2009	Amend	2-1-2010	173-012-0000	3-25-2010	Amend(T)	5-1-2010
165-012-0240	12-31-2009	Amend	2-1-2010	173-012-0005	3-25-2010	Amend(T)	5-1-2010
165-013-0010	12-31-2009	Amend	2-1-2010	173-014-0000	3-25-2010	Amend(T)	5-1-2010
165-013-0020	12-31-2009	Amend	2-1-2010	173-014-0005	3-25-2010	Amend(T)	5-1-2010
165-014-0005	12-31-2009	Amend	2-1-2010	173-014-0010	3-25-2010	Amend(T)	5-1-2010
165-014-0100	12-31-2009	Amend	2-1-2010	173-015-0010	3-25-2010	Amend(T)	5-1-2010
165-014-0280	12-31-2009	Amend	2-1-2010	173-016-0010	3-25-2010	Adopt(T)	5-1-2010
165-020-0005	12-31-2009	Amend	2-1-2010	177-010-0003	3-21-2010	Amend	5-1-2010
165-020-0020	12-31-2009	Amend	2-1-2010	177-020-0100	2-1-2010	Amend	3-1-2010
165-020-0050	12-31-2009	Amend	2-1-2010	177-036-0200	1-20-2010	Suspend	3-1-2010
165-020-0060	12-31-2009	Amend	2-1-2010	177-036-0200	3-21-2010	Repeal	5-1-2010
166-150-0035	12-23-2009	Amend	2-1-2010	177-036-0200(T)	3-21-2010	Repeal	5-1-2010
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167-001-0005	7-7-2010	Amend	8-1-2010	177-065-0005	6-27-2010	Repeal	8-1-2010
167-001-0007	7-7-2010	Amend	8-1-2010	177-065-0015	6-27-2010	Repeal	8-1-2010
167-001-0030	7-7-2010	Amend	8-1-2010	177-065-0020	6-27-2010	Repeal	8-1-2010
167-001-0081	7-7-2010	Amend	8-1-2010	177-065-0025	6-27-2010	Repeal	8-1-2010
167-001-0085	7-7-2010	Amend	8-1-2010	177-065-0030	6-27-2010	Repeal	8-1-2010

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177-065-0045	6-27-2010	Repeal	8-1-2010	199-005-0003	3-15-2010	Adopt	4-1-2010
177-065-0055	6-27-2010	Repeal	8-1-2010	199-005-0003	3-15-2010	Amend	4-1-2010
177-065-0065	6-27-2010	Repeal	8-1-2010	199-005-0005	3-15-2010	Amend	4-1-2010
177-065-0075	6-27-2010	Repeal	8-1-2010	199-005-0010	3-15-2010	Amend	4-1-2010
177-065-0080	6-27-2010	Repeal	8-1-2010	199-005-0015	3-15-2010	Amend	4-1-2010
177-070-0005	3-21-2010	Amend	5-1-2010	199-005-0020	3-15-2010	Amend	4-1-2010
177-070-0025	2-1-2010	Amend	3-1-2010	199-005-0025	3-15-2010	Amend	4-1-2010
177-098-0000	3-21-2010	Adopt	5-1-2010	199-005-0027	3-15-2010	Adopt	4-1-2010
177-098-0010	3-21-2010	Adopt	5-1-2010	199-005-0035	3-15-2010	Amend	4-1-2010
177-098-0020	3-21-2010	Adopt	5-1-2010	199-010-0005	3-15-2010	Amend	4-1-2010
177-098-0030	3-21-2010	Adopt	5-1-2010	199-010-0025	3-15-2010	Amend	4-1-2010
177-098-0040	3-21-2010	Adopt	5-1-2010	199-010-0035	3-15-2010	Amend	4-1-2010
177-098-0050	3-21-2010	Adopt	5-1-2010	199-010-0060	3-15-2010	Amend	4-1-2010
177-098-0060	3-21-2010	Adopt	5-1-2010	199-010-0070	3-15-2010	Amend	4-1-2010
177-098-0070	3-21-2010	Adopt	5-1-2010	199-010-0075	3-15-2010	Amend	4-1-2010
177-098-0080	3-21-2010	Adopt	5-1-2010	199-010-0080	3-15-2010	Amend	4-1-2010
177-098-0090	3-21-2010	Adopt	5-1-2010	199-010-0085	3-15-2010	Amend	4-1-2010
177-098-0100	3-21-2010	Adopt	5-1-2010	199-010-0090	3-15-2010	Amend	4-1-2010
177-098-0110	3-21-2010	Adopt	5-1-2010	199-010-0095	3-15-2010	Amend	4-1-2010
177-099-0100	2-1-2010	Amend	3-1-2010	199-010-0100	3-15-2010	Amend	4-1-2010
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177-200-0010	3-15-2010	Amend(T)	4-1-2010	199-020-0008	3-15-2010	Adopt	4-1-2010
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177-200-0020	3-15-2010	Amend(T)	4-1-2010	213-003-0001(T)	1-1-2010	Repeal	2-1-2010
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190-020-0000	7-1-2010	Amend	8-1-2010	213-008-0002(T)	7-1-2010	Repeal	8-1-2010
190-020-0005	7-1-2010	Amend	8-1-2010	213-017-0004	12-13-2009	Amend	1-1-2010
190-020-0010	7-1-2010	Amend	8-1-2010	213-017-0004	1-1-2010	Amend	2-1-2010
190-020-0012	7-1-2010	Adopt	8-1-2010	213-017-0004(T)	12-13-2009	Repeal	1-1-2010
190-020-0013	7-1-2010	Adopt	8-1-2010	213-017-0005	1-1-2010	Amend	2-1-2010
190-020-0015	7-1-2010	Amend	8-1-2010	213-017-0006	12-13-2009	Amend	1-1-2010
190-020-0025	7-1-2010	Amend	8-1-2010	213-017-0006	1-1-2010	Amend	2-1-2010
190-020-0030	7-1-2010	Amend	8-1-2010	213-017-0006	6-30-2010	Amend(T)	8-1-2010
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190-020-0040	7-1-2010	Amend	8-1-2010	213-017-0009(T)	1-1-2010	Suspend	1-1-2010
190-020-0045	7-1-2010	Repeal	8-1-2010	213-018-0022	12-13-2009	Adopt	1-1-2010
190-020-0050	7-1-2010	Amend	8-1-2010	213-018-0022(T)	12-13-2009	Repeal	1-1-2010
190-020-0055	7-1-2010	Amend	8-1-2010	213-018-0058	1-1-2010	Adopt	2-1-2010
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190-020-0065	7-1-2010	Amend	8-1-2010	250-010-0650	1-5-2010	Amend(T)	2-1-2010
190-020-0070	7-1-2010	Repeal	8-1-2010	250-010-0650	1-15-2010	Amend(T)	2-1-2010
190-020-0074	7-1-2010	Adopt	8-1-2010	250-010-0650	5-6-2010	Amend	6-1-2010
190-020-0080	7-1-2010	Adopt	8-1-2010	250-010-0650(T)	1-15-2010	Suspend	2-1-2010
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199-001-0005	3-15-2010	Amend	4-1-2010	250-020-0151	6-15-2010	Amend(T)	7-1-2010
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199-001-0015	3-15-2010	Adopt	4-1-2010	250-020-0241	6-1-2010	Amend(T)	7-1-2010
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250-030-0030(T)	5-6-2010	Repeal	6-1-2010	257-050-0020	1-1-2010	Amend(T)	2-1-2010
255-005-0005	7-6-2010	Amend(T)	8-1-2010	257-050-0020	6-30-2010	Amend	7-1-2010
255-030-0027	7-6-2010	Amend(T)	8-1-2010	257-050-0020(T)	6-30-2010	Repeal	7-1-2010
255-032-0005	3-26-2010	Amend	5-1-2010	257-050-0040	1-1-2010	Amend(T)	2-1-2010
255-032-0005(T)	3-26-2010	Repeal	5-1-2010	257-050-0040	6-30-2010	Amend	7-1-2010
255-032-0011	3-26-2010	Amend	5-1-2010	257-050-0040(T)	6-30-2010	Repeal	7-1-2010
255-032-0011(T)	3-26-2010	Repeal	5-1-2010	257-050-0050	1-1-2010	Amend(T)	2-1-2010
255-032-0015	3-26-2010	Amend	5-1-2010	257-050-0050	6-30-2010	Amend	7-1-2010
255-032-0015(T)	3-26-2010	Repeal	5-1-2010	257-050-0050	7-14-2010	Amend(T)	8-1-2010
255-032-0025	3-26-2010	Amend	5-1-2010	257-050-0050(T)	6-30-2010	Repeal	7-1-2010
255-032-0025(T)	3-26-2010	Repeal	5-1-2010	257-050-0060	1-1-2010	Amend(T)	2-1-2010
255-032-0026	3-26-2010	Repeal	5-1-2010	257-050-0060	6-30-2010	Amend	7-1-2010
255-032-0029	3-26-2010	Amend	5-1-2010	257-050-0060(T)	6-30-2010	Repeal	7-1-2010
255-032-0029(T)	3-26-2010	Repeal	5-1-2010	257-050-0070	1-1-2010	Amend(T)	2-1-2010
255-062-0005	1-5-2010	Adopt(T)	2-1-2010	257-050-0070	6-30-2010	Amend	7-1-2010
255-062-0006	7-6-2010	Adopt(T)	8-1-2010	257-050-0070(T)	6-30-2010	Repeal	7-1-2010
255-062-0010	1-5-2010	Adopt(T)	2-1-2010	257-050-0090	1-1-2010	Amend(T)	2-1-2010
255-062-0011	7-6-2010	Adopt(T)	8-1-2010	257-050-0090	6-30-2010	Amend	7-1-2010
255-062-0015	1-5-2010	Adopt(T)	2-1-2010	257-050-0090(T)	6-30-2010	Repeal	7-1-2010
255-062-0016	7-6-2010	Adopt(T)	8-1-2010	257-050-0095	1-1-2010	Amend(T)	2-1-2010
255-062-0020	1-5-2010	Adopt(T)	2-1-2010	257-050-0095	6-30-2010	Amend	7-1-2010
255-062-0021	7-6-2010	Adopt(T)	8-1-2010	257-050-0095(T)	6-30-2010	Repeal	7-1-2010
255-062-0025	1-5-2010	Adopt(T)	2-1-2010	257-050-0100	1-1-2010	Amend(T)	2-1-2010
255-062-0026	7-6-2010	Adopt(T)	8-1-2010	257-050-0100	6-30-2010	Amend	7-1-2010
255-062-0030	1-5-2010	Adopt(T)	2-1-2010	257-050-0100(T)	6-30-2010	Repeal	7-1-2010
255-062-0031	7-6-2010	Adopt(T)	8-1-2010	257-050-0110	1-1-2010	Amend(T)	2-1-2010
255-070-0001	1-1-2010	Amend	2-1-2010	257-050-0110	6-30-2010	Amend	7-1-2010
255-094-0000	2-26-2010	Am. & Ren.	4-1-2010	257-050-0110(T)	6-30-2010	Repeal	7-1-2010
255-094-0002	2-26-2010	Adopt	4-1-2010	257-050-0115	1-1-2010	Amend(T)	2-1-2010
255-094-0010	2-26-2010	Amend	4-1-2010	257-050-0115	6-30-2010	Amend	7-1-2010
255-094-0015	2-26-2010	Amend	4-1-2010	257-050-0115(T)	6-30-2010	Repeal	7-1-2010
255-094-0020	2-26-2010	Amend	4-1-2010	257-050-0125	1-1-2010	Amend(T)	2-1-2010
257-001-0005	1-1-2010	Amend(T)	2-1-2010	257-050-0125	6-30-2010	Amend	7-1-2010
257-001-0005	6-30-2010	Amend	7-1-2010	257-050-0125(T)	6-30-2010	Repeal	7-1-2010
257-001-0005(T)	6-30-2010	Repeal	7-1-2010	257-050-0130	1-1-2010	Amend(T)	2-1-2010
257-010-0015	7-1-2010	Amend(T)	8-1-2010	257-050-0130	6-30-2010	Amend	7-1-2010
257-010-0020	7-1-2010	Amend(T)	8-1-2010	257-050-0130(T)	6-30-2010	Repeal	7-1-2010
257-010-0025	7-1-2010	Amend(T)	8-1-2010	257-050-0140	1-1-2010	Amend(T)	2-1-2010
257-010-0045	7-1-2010	Amend(T)	8-1-2010	257-050-0140	6-30-2010	Amend	7-1-2010
257-010-0050	7-1-2010	Amend(T)	8-1-2010	257-050-0140(T)	6-30-2010	Repeal	7-1-2010
257-010-0055	5-28-2010	Amend(T)	7-1-2010	257-050-0145	1-1-2010	Amend(T)	2-1-2010
257-045-0010	1-1-2010	Adopt(T)	2-1-2010	257-050-0145	6-30-2010	Amend	7-1-2010
257-045-0010	6-30-2010	Adopt	7-1-2010	257-050-0145(T)	6-30-2010	Repeal	7-1-2010
257-045-0010(T)	6-30-2010	Repeal	7-1-2010	257-050-0150	1-1-2010	Amend(T)	2-1-2010
257-045-0020	1-1-2010	Adopt(T)	2-1-2010	257-050-0150	6-30-2010	Amend	7-1-2010
257-045-0020	6-30-2010	Adopt	7-1-2010	257-050-0150(T)	6-30-2010	Repeal	7-1-2010
257-045-0020(T)	6-30-2010	Repeal	7-1-2010	257-050-0155	1-1-2010	Amend(T)	2-1-2010
257-045-0030	1-1-2010	Adopt(T)	2-1-2010	257-050-0155	6-30-2010	Amend	7-1-2010
257-045-0030	6-30-2010	Adopt	7-1-2010	257-050-0155	7-14-2010	Amend(T)	8-1-2010
257-045-0030(T)	6-30-2010	Repeal	7-1-2010	257-050-0155(T)	6-30-2010	Repeal	7-1-2010
257-045-0040	1-1-2010	Adopt(T)	2-1-2010	257-050-0157	1-1-2010	Amend(T)	2-1-2010
257-045-0040	6-30-2010	Adopt	7-1-2010	257-050-0157	6-30-2010	Amend	7-1-2010
257-045-0040(T)	6-30-2010	Repeal	7-1-2010	257-050-0157	7-14-2010	Amend(T)	8-1-2010
257-045-0050	1-1-2010	Adopt(T)	2-1-2010	257-050-0157(T)	6-30-2010	Repeal	7-1-2010
257-045-0050	6-30-2010	Adopt	7-1-2010	257-050-0170	1-1-2010	Amend(T)	2-1-2010
257-045-0050(T)	6-30-2010	Repeal	7-1-2010	257-050-0170	6-30-2010	Amend	7-1-2010

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257-050-0170(T)	6-30-2010	Repeal	7-1-2010	291-015-0125	7-14-2010	Amend(T)	8-1-2010
257-050-0180	1-1-2010	Amend(T)	2-1-2010	291-015-0130	7-14-2010	Suspend	8-1-2010
257-050-0180	6-30-2010	Amend	7-1-2010	291-015-0135	7-14-2010	Amend(T)	8-1-2010
257-050-0180(T)	6-30-2010	Repeal	7-1-2010	291-015-0140	7-14-2010	Suspend	8-1-2010
257-050-0200	1-1-2010	Amend(T)	2-1-2010	291-015-0145	7-14-2010	Suspend	8-1-2010
257-050-0200	6-30-2010	Amend	7-1-2010	291-015-0150	7-14-2010	Suspend	8-1-2010
257-050-0200(T)	6-30-2010	Repeal	7-1-2010	291-058-0046	2-24-2010	Amend	4-1-2010
259-006-0000	6-2-2010	Amend	7-1-2010	291-070-0130	11-20-2009	Amend	1-1-2010
259-007-0000	6-2-2010	Amend	7-1-2010	291-084-0010	11-20-2009	Repeal	1-1-2010
259-008-0000	12-15-2009	Amend	1-1-2010	291-084-0020	11-20-2009	Repeal	1-1-2010
259-008-0005	8-1-2010	Amend	8-1-2010	291-084-0030	11-20-2009	Repeal	1-1-2010
259-008-0015	1-11-2010	Amend	2-1-2010	291-084-0040	11-20-2009	Repeal	1-1-2010
259-008-0015	3-15-2010	Amend	4-1-2010	291-097-0005	11-20-2009	Amend	1-1-2010
259-008-0017	5-1-2010	Adopt	5-1-2010	291-097-0005	4-14-2010	Amend(T)	5-1-2010
259-008-0020	8-1-2010	Amend	8-1-2010	291-097-0005	7-14-2010	Amend	8-1-2010
259-008-0025	12-15-2009	Amend	1-1-2010	291-097-0005(T)	7-14-2010	Repeal	8-1-2010
259-008-0025	5-1-2010	Amend	5-1-2010	291-097-0010	11-20-2009	Amend	1-1-2010
259-008-0025(T)	12-15-2009	Repeal	1-1-2010	291-097-0010	4-14-2010	Amend(T)	5-1-2010
259-008-0030	8-1-2010	Amend	8-1-2010	291-097-0010	7-14-2010	Amend	8-1-2010
259-008-0040	5-1-2010	Amend	5-1-2010	291-097-0010(T)	7-14-2010	Repeal	8-1-2010
259-008-0060	1-11-2010	Amend	2-1-2010	291-097-0015	11-20-2009	Amend	1-1-2010
259-008-0060	3-15-2010	Amend	4-1-2010	291-097-0015	4-14-2010	Amend(T)	5-1-2010
259-008-0060	6-2-2010	Amend	7-1-2010	291-097-0015	7-14-2010	Amend	8-1-2010
259-008-0060	8-1-2010	Amend	8-1-2010	291-097-0015(T)	7-14-2010	Repeal	8-1-2010
259-008-0064	1-11-2010	Amend	2-1-2010	291-097-0020	11-20-2009	Amend	1-1-2010
259-008-0064	3-15-2010	Amend	4-1-2010	291-097-0020	4-14-2010	Amend(T)	5-1-2010
259-008-0064	8-1-2010	Amend	8-1-2010	291-097-0020	7-14-2010	Amend	8-1-2010
259-008-0065	8-1-2010	Amend	8-1-2010	291-097-0020(T)	7-14-2010	Repeal	8-1-2010
259-008-0067	8-1-2010	Amend	8-1-2010	291-097-0023	11-20-2009	Adopt	1-1-2010
259-008-0075	5-1-2010	Amend	5-1-2010	291-097-0023	4-14-2010	Amend(T)	5-1-2010
259-008-0076	8-1-2010	Amend	8-1-2010	291-097-0023	7-14-2010	Amend	8-1-2010
259-009-0005	12-15-2009	Amend(T)	1-1-2010	291-097-0023(T)	7-14-2010	Repeal	8-1-2010
259-009-0005	6-14-2010	Amend	7-1-2010	291-097-0025	11-20-2009	Amend	1-1-2010
259-009-0062	12-15-2009	Amend(T)	1-1-2010	291-097-0025	4-14-2010	Amend(T)	5-1-2010
259-009-0062	6-14-2010	Amend	7-1-2010	291-097-0025	7-14-2010	Amend	8-1-2010
259-009-0070	8-1-2010	Amend	8-1-2010	291-097-0025(T)	7-14-2010	Repeal	8-1-2010
259-030-0000	6-2-2010	Amend	7-1-2010	291-097-0030	4-14-2010	Amend(T)	5-1-2010
259-060-0500	7-1-2010	Amend(T)	7-1-2010	291-097-0030	7-14-2010	Amend	8-1-2010
274-006-0001	1-1-2010	Adopt	2-1-2010	291-097-0030(T)	7-14-2010	Repeal	8-1-2010
274-006-0002	1-1-2010	Adopt	2-1-2010	291-097-0040	11-20-2009	Amend	1-1-2010
274-006-0004	1-1-2010	Adopt	2-1-2010	291-097-0040	4-14-2010	Amend(T)	5-1-2010
274-006-0005	1-1-2010	Adopt	2-1-2010	291-097-0040	7-14-2010	Amend	8-1-2010
274-006-0010	1-1-2010	Adopt	2-1-2010	291-097-0040(T)	7-14-2010	Repeal	8-1-2010
274-006-0011	1-1-2010	Adopt	2-1-2010	291-097-0080	11-20-2009	Amend	1-1-2010
274-006-0012	1-1-2010	Adopt	2-1-2010	291-097-0100	11-20-2009	Amend	1-1-2010
274-006-0013	1-1-2010	Adopt	2-1-2010	291-157-0005	4-6-2010	Amend	5-1-2010
274-006-0014	1-1-2010	Adopt	2-1-2010	291-157-0005(T)	4-6-2010	Repeal	5-1-2010
274-006-0015	1-1-2010	Adopt	2-1-2010	291-157-0010	4-6-2010	Amend	5-1-2010
274-006-0018	1-1-2010	Adopt	2-1-2010	291-157-0010(T)	4-6-2010	Repeal	5-1-2010
274-006-0020	1-1-2010	Adopt	2-1-2010	291-157-0015	4-6-2010	Amend	5-1-2010
274-007-0001	6-1-2010	Adopt(T)	7-1-2010	291-157-0015(T)	4-6-2010	Repeal	5-1-2010
291-015-0100	7-14-2010	Amend(T)	8-1-2010	291-157-0020	4-6-2010	Repeal	5-1-2010
291-015-0105	7-14-2010	Amend(T)	8-1-2010	291-157-0021	4-6-2010	Adopt	5-1-2010
291-015-0110	7-14-2010	Amend(T)	8-1-2010	291-157-0021(T)	4-6-2010	Repeal	5-1-2010
291-015-0115	7-14-2010	Amend(T)	8-1-2010	291-157-0025	4-6-2010	Repeal	5-1-2010
291-015-0120	7-14-2010	Amend(T)	8-1-2010	291-157-0035	4-6-2010	Amend	5-1-2010

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291-157-0035(T)	4-6-2010	Repeal	5-1-2010	309-016-0105	3-4-2010	Amend(T)	4-1-2010
291-157-0041	4-6-2010	Repeal	5-1-2010	309-016-0105(T)	7-1-2010	Suspend	7-1-2010
291-157-0055	4-6-2010	Repeal	5-1-2010	309-016-0110	3-4-2010	Amend(T)	4-1-2010
291-180-0274	1-4-2010	Adopt(T)	2-1-2010	309-016-0110(T)	7-1-2010	Suspend	7-1-2010
291-180-0274	6-10-2010	Adopt	7-1-2010	309-016-0115	3-4-2010	Amend(T)	4-1-2010
291-206-0005	2-24-2010	Adopt	4-1-2010	309-016-0115(T)	7-1-2010	Suspend	7-1-2010
291-206-0005	3-23-2010	Amend(T)	5-1-2010	309-016-0120	3-4-2010	Amend(T)	4-1-2010
291-206-0010	2-24-2010	Adopt	4-1-2010	309-016-0120(T)	7-1-2010	Suspend	7-1-2010
291-206-0010	3-23-2010	Amend(T)	5-1-2010	309-016-0130	3-4-2010	Suspend	4-1-2010
291-206-0015	2-24-2010	Adopt	4-1-2010	309-016-0140	3-4-2010	Amend(T)	4-1-2010
291-206-0015	3-23-2010	Amend(T)	5-1-2010	309-016-0140(T)	7-1-2010	Suspend	7-1-2010
291-206-0020	2-24-2010	Adopt	4-1-2010	309-016-0150	3-4-2010	Suspend	4-1-2010
291-206-0020	3-23-2010	Amend(T)	5-1-2010	309-016-0160	3-4-2010	Suspend	4-1-2010
291-206-0025	2-24-2010	Adopt	4-1-2010	309-016-0170	3-4-2010	Suspend	4-1-2010
291-206-0025	3-23-2010	Amend(T)	5-1-2010	309-016-0180	3-4-2010	Suspend	4-1-2010
291-206-0030	2-24-2010	Adopt	4-1-2010	309-016-0190	3-4-2010	Suspend	4-1-2010
309-011-0105	7-1-2010	Adopt	8-1-2010	309-016-0200	3-4-2010	Suspend	4-1-2010
309-011-0110	7-1-2010	Adopt	8-1-2010	309-016-0210	3-4-2010	Suspend	4-1-2010
309-011-0115	7-1-2010	Adopt	8-1-2010	309-016-0220	3-4-2010	Amend(T)	4-1-2010
309-016-0000	3-4-2010	Amend(T)	4-1-2010	309-016-0220(T)	7-1-2010	Suspend	7-1-2010
309-016-0000(T)	7-1-2010	Suspend	7-1-2010	309-016-0230	3-4-2010	Suspend	4-1-2010
309-016-0005	3-4-2010	Amend(T)	4-1-2010	309-016-0300	3-4-2010	Suspend	4-1-2010
309-016-0005(T)	7-1-2010	Suspend	7-1-2010	309-016-0310	3-4-2010	Suspend	4-1-2010
309-016-0010	3-4-2010	Amend(T)	4-1-2010	309-016-0320	3-4-2010	Suspend	4-1-2010
309-016-0010(T)	7-1-2010	Suspend	7-1-2010	309-016-0330	3-4-2010	Suspend	4-1-2010
309-016-0015	3-4-2010	Amend(T)	4-1-2010	309-016-0340	3-4-2010	Suspend	4-1-2010
309-016-0015(T)	7-1-2010	Suspend	7-1-2010	309-016-0350	3-4-2010	Suspend	4-1-2010
309-016-0020	3-4-2010	Amend(T)	4-1-2010	309-016-0360	3-4-2010	Suspend	4-1-2010
309-016-0020(T)	7-1-2010	Suspend	7-1-2010	309-016-0370	3-4-2010	Suspend	4-1-2010
309-016-0027	3-4-2010	Suspend	4-1-2010	309-016-0380	3-4-2010	Suspend	4-1-2010
309-016-0030	3-4-2010	Amend(T)	4-1-2010	309-016-0390	3-4-2010	Suspend	4-1-2010
309-016-0030(T)	7-1-2010	Suspend	7-1-2010	309-016-0400	3-4-2010	Suspend	4-1-2010
309-016-0035	3-4-2010	Amend(T)	4-1-2010	309-016-0410	3-4-2010	Suspend	4-1-2010
309-016-0035(T)	7-1-2010	Suspend	7-1-2010	309-016-0420	3-4-2010	Suspend	4-1-2010
309-016-0040	3-4-2010	Amend(T)	4-1-2010	309-016-0430	3-4-2010	Suspend	4-1-2010
309-016-0040(T)	7-1-2010	Suspend	7-1-2010	309-016-0440	3-4-2010	Suspend	4-1-2010
309-016-0070	3-4-2010	Amend(T)	4-1-2010	309-016-0450	3-4-2010	Suspend	4-1-2010
309-016-0070(T)	7-1-2010	Suspend	7-1-2010	309-016-0600	7-1-2010	Adopt(T)	7-1-2010
309-016-0072	3-4-2010	Amend(T)	4-1-2010	309-016-0605	7-1-2010	Adopt(T)	7-1-2010
309-016-0072(T)	7-1-2010	Suspend	7-1-2010	309-016-0610	7-1-2010	Adopt(T)	7-1-2010
309-016-0075	3-4-2010	Amend(T)	4-1-2010	309-016-0615	7-1-2010	Adopt(T)	7-1-2010
309-016-0075(T)	7-1-2010	Suspend	7-1-2010	309-016-0620	7-1-2010	Adopt(T)	7-1-2010
309-016-0077	3-4-2010	Amend(T)	4-1-2010	309-016-0625	7-1-2010	Adopt(T)	7-1-2010
309-016-0077(T)	7-1-2010	Suspend	7-1-2010	309-016-0630	7-1-2010	Adopt(T)	7-1-2010
309-016-0080	3-4-2010	Amend(T)	4-1-2010	309-016-0635	7-1-2010	Adopt(T)	7-1-2010
309-016-0080(T)	7-1-2010	Suspend	7-1-2010	309-016-0640	7-1-2010	Adopt(T)	7-1-2010
309-016-0085	3-4-2010	Amend(T)	4-1-2010	309-016-0645	7-1-2010	Adopt(T)	7-1-2010
309-016-0085(T)	7-1-2010	Suspend	7-1-2010	309-016-0650	7-1-2010	Adopt(T)	7-1-2010
309-016-0088	3-4-2010	Amend(T)	4-1-2010	309-016-0660	7-1-2010	Adopt(T)	7-1-2010
309-016-0088(T)	7-1-2010	Suspend	7-1-2010	309-016-0665	7-1-2010	Adopt(T)	7-1-2010
309-016-0095	3-4-2010	Amend(T)	4-1-2010	309-016-0670	7-1-2010	Adopt(T)	7-1-2010
309-016-0095(T)	7-1-2010	Suspend	7-1-2010	309-016-0675	7-1-2010	Adopt(T)	7-1-2010
309-016-0100	3-4-2010	Amend(T)	4-1-2010	309-016-0680	7-1-2010	Adopt(T)	7-1-2010
309-016-0100(T)	7-1-2010	Suspend	7-1-2010	309-016-0685	7-1-2010	Adopt(T)	7-1-2010
309-016-0102	3-4-2010	Amend(T)	4-1-2010	309-016-0690	7-1-2010	Adopt(T)	7-1-2010
309-016-0102(T)	7-1-2010	Suspend	7-1-2010	309-016-0695	7-1-2010	Adopt(T)	7-1-2010

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309-032-1525	3-4-2010	Adopt	4-1-2010	309-041-0640	12-9-2009	Renumber	1-1-2010
309-032-1530	3-4-2010	Adopt	4-1-2010	309-041-0650	12-9-2009	Renumber	1-1-2010
309-032-1535	3-4-2010	Adopt	4-1-2010	309-041-0660	12-9-2009	Renumber	1-1-2010
309-032-1540	3-4-2010	Adopt	4-1-2010	309-041-0670	12-9-2009	Renumber	1-1-2010
309-032-1545	3-4-2010	Adopt	4-1-2010	309-041-0680	12-9-2009	Renumber	1-1-2010
309-032-1550	3-4-2010	Adopt	4-1-2010	309-041-0690	12-9-2009	Renumber	1-1-2010
309-032-1555	3-4-2010	Adopt	4-1-2010	309-041-0700	12-9-2009	Renumber	1-1-2010
309-032-1560	3-4-2010	Adopt	4-1-2010	309-041-0710	12-9-2009	Renumber	1-1-2010
309-032-1565	3-4-2010	Adopt	4-1-2010	309-041-0715	12-9-2009	Renumber	1-1-2010
309-033-0270	12-17-2009	Amend	2-1-2010	309-041-0720	12-9-2009	Renumber	1-1-2010
309-034-0150	3-4-2010	Amend(T)	4-1-2010	309-041-0730	12-9-2009	Renumber	1-1-2010
309-034-0160	3-4-2010	Amend(T)	4-1-2010	309-041-0740	12-9-2009	Renumber	1-1-2010
309-034-0170	3-4-2010	Amend(T)	4-1-2010	309-041-0750	12-9-2009	Renumber	1-1-2010
309-034-0180	3-4-2010	Amend(T)	4-1-2010	309-041-0760	12-9-2009	Renumber	1-1-2010
309-034-0190	3-4-2010	Amend(T)	4-1-2010	309-041-0770	12-9-2009	Renumber	1-1-2010
309-034-0205	3-4-2010	Amend(T)	4-1-2010	309-041-0780	12-9-2009	Renumber	1-1-2010
309-034-0210	3-4-2010	Amend(T)	4-1-2010	309-041-0790	12-9-2009	Renumber	1-1-2010
309-034-0240	3-4-2010	Amend(T)	4-1-2010	309-041-0800	12-9-2009	Renumber	1-1-2010
309-034-0250	3-4-2010	Amend(T)	4-1-2010	309-041-0805	12-9-2009	Renumber	1-1-2010
309-034-0260	3-4-2010	Amend(T)	4-1-2010	309-041-0810	12-9-2009	Renumber	1-1-2010
309-034-0270	3-4-2010	Amend(T)	4-1-2010	309-041-0820	12-9-2009	Renumber	1-1-2010
309-034-0290	3-4-2010	Amend(T)	4-1-2010	309-041-0830	12-9-2009	Renumber	1-1-2010
309-034-0310	3-4-2010	Amend(T)	4-1-2010	309-114-0005	12-28-2009	Amend	2-1-2010
309-034-0320	3-4-2010	Amend(T)	4-1-2010	309-114-0005	3-12-2010	Amend(T)	4-1-2010
309-034-0400	3-4-2010	Amend(T)	4-1-2010	309-114-0020	3-24-2010	Amend(T)	5-1-2010
309-034-0410	3-4-2010	Amend(T)	4-1-2010	325-030-0001	4-26-2010	Adopt	6-1-2010
309-034-0420	3-4-2010	Amend(T)	4-1-2010	325-030-0005	4-26-2010	Adopt	6-1-2010
309-034-0430	3-4-2010	Amend(T)	4-1-2010	325-030-0010	4-26-2010	Adopt	6-1-2010
309-034-0440	3-4-2010	Amend(T)	4-1-2010	325-030-0015	4-26-2010	Adopt	6-1-2010
309-034-0450	3-4-2010	Amend(T)	4-1-2010	325-030-0020	4-26-2010	Adopt	6-1-2010
309-034-0460	3-4-2010	Amend(T)	4-1-2010	325-030-0025	4-26-2010	Adopt	6-1-2010
309-034-0470	3-4-2010	Amend(T)	4-1-2010	325-030-0030	4-26-2010	Adopt	6-1-2010
309-034-0480	3-4-2010	Amend(T)	4-1-2010	325-030-0035	4-26-2010	Adopt	6-1-2010
309-034-0490	3-4-2010	Amend(T)	4-1-2010	325-030-0040	4-26-2010	Adopt	6-1-2010
309-035-0155	12-17-2009	Amend	2-1-2010	325-030-0045	4-26-2010	Adopt	6-1-2010
309-035-0380	12-17-2009	Amend	2-1-2010	325-030-0050	4-26-2010	Adopt	6-1-2010
309-036-0100	6-7-2010	Amend	7-1-2010	325-030-0055	4-26-2010	Adopt	6-1-2010
309-036-0105	6-7-2010	Amend	7-1-2010	325-030-0060	4-26-2010	Adopt	6-1-2010
309-036-0110	6-7-2010	Amend	7-1-2010	330-001-0005	1-27-2010	Amend	3-1-2010
309-036-0115	6-7-2010	Amend	7-1-2010	330-001-0025	1-27-2010	Adopt	3-1-2010
309-036-0120	6-7-2010	Amend	7-1-2010	330-063-0000	7-1-2010	Adopt	8-1-2010
309-036-0125	6-7-2010	Repeal	7-1-2010	330-063-0010	7-1-2010	Adopt	8-1-2010
309-036-0130	6-7-2010	Adopt	7-1-2010	330-063-0020	7-1-2010	Adopt	8-1-2010
309-036-0135	6-7-2010	Adopt	7-1-2010	330-063-0030	7-1-2010	Adopt	8-1-2010
309-036-0140	6-7-2010	Adopt	7-1-2010	330-063-0040	7-1-2010	Adopt	8-1-2010
309-040-0410	1-29-2010	Amend	3-1-2010	330-070-0010	7-1-2010	Amend(T)	8-1-2010
309-040-0410(T)	1-29-2010	Repeal	3-1-2010	330-070-0013	7-1-2010	Amend(T)	8-1-2010
309-041-0550	12-9-2009	Renumber	1-1-2010	330-070-0022	7-1-2010	Amend(T)	8-1-2010
309-041-0560	12-9-2009	Renumber	1-1-2010	330-075-0005	12-21-2009	Amend(T)	2-1-2010
309-041-0570	12-9-2009	Renumber	1-1-2010	330-075-0005	6-16-2010	Amend	8-1-2010
309-041-0580	12-9-2009	Renumber	1-1-2010	330-075-0005(T)	6-16-2010	Repeal	8-1-2010
309-041-0590	12-9-2009	Renumber	1-1-2010	330-075-0010	12-21-2009	Amend(T)	2-1-2010
309-041-0600	12-9-2009	Renumber	1-1-2010	330-075-0010	6-16-2010	Repeal	8-1-2010
309-041-0610	12-9-2009	Renumber	1-1-2010	330-075-0015	12-21-2009	Amend(T)	2-1-2010
309-041-0620	12-9-2009	Renumber	1-1-2010	330-075-0015	6-16-2010	Amend	8-1-2010
309-041-0630	12-9-2009	Renumber	1-1-2010	330-075-0015(T)	6-16-2010	Repeal	8-1-2010

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330-075-0025	6-16-2010	Amend	8-1-2010	331-520-0000	4-1-2010	Amend	5-1-2010
330-075-0025(T)	6-16-2010	Repeal	8-1-2010	331-520-0010	4-1-2010	Amend	5-1-2010
330-075-0030	12-21-2009	Suspend	2-1-2010	331-520-0030	4-1-2010	Amend	5-1-2010
330-075-0035	12-21-2009	Amend(T)	2-1-2010	331-520-0040	4-1-2010	Amend	5-1-2010
330-075-0035	6-16-2010	Amend	8-1-2010	331-520-0060	4-1-2010	Repeal	5-1-2010
330-075-0035(T)	6-16-2010	Repeal	8-1-2010	331-520-0070	4-1-2010	Amend	5-1-2010
330-090-0105	4-30-2010	Amend	6-1-2010	331-525-0020	4-1-2010	Amend	5-1-2010
330-090-0105	5-27-2010	Amend(T)	7-1-2010	331-525-0035	4-1-2010	Amend	5-1-2010
330-090-0105(T)	4-30-2010	Repeal	6-1-2010	331-525-0038	4-1-2010	Amend	5-1-2010
330-090-0110	4-30-2010	Amend	6-1-2010	331-525-0040	4-1-2010	Amend	5-1-2010
330-090-0110	5-27-2010	Amend(T)	7-1-2010	331-525-0055	4-1-2010	Amend	5-1-2010
330-090-0110(T)	4-30-2010	Repeal	6-1-2010	331-525-0060	4-1-2010	Amend	5-1-2010
330-090-0120	4-30-2010	Amend	6-1-2010	331-525-0065	4-1-2010	Amend	5-1-2010
330-090-0120	5-27-2010	Amend(T)	7-1-2010	331-530-0000	4-1-2010	Amend	5-1-2010
330-090-0120(T)	4-30-2010	Repeal	6-1-2010	331-530-0020	4-1-2010	Amend	5-1-2010
330-090-0130	4-30-2010	Amend	6-1-2010	331-535-0000	4-1-2010	Amend	5-1-2010
330-090-0130	5-27-2010	Amend(T)	7-1-2010	331-535-0010	4-1-2010	Amend	5-1-2010
330-090-0130(T)	4-30-2010	Repeal	6-1-2010	331-535-0020	4-1-2010	Amend	5-1-2010
330-090-0133	4-30-2010	Adopt	6-1-2010	331-535-0030	4-1-2010	Amend	5-1-2010
330-090-0133	5-27-2010	Amend(T)	7-1-2010	331-535-0040	4-1-2010	Amend	5-1-2010
330-090-0133(T)	4-30-2010	Repeal	6-1-2010	331-535-0050	4-1-2010	Amend	5-1-2010
330-090-0135	4-30-2010	Amend	6-1-2010	331-535-0060	4-1-2010	Amend	5-1-2010
330-090-0135(T)	4-30-2010	Repeal	6-1-2010	331-535-0070	4-1-2010	Amend	5-1-2010
330-090-0140	1-8-2010	Amend	2-1-2010	331-535-0080	4-1-2010	Amend	5-1-2010
330-090-0140	5-27-2010	Amend(T)	7-1-2010	331-540-0000	4-1-2010	Amend	5-1-2010
330-090-0140(T)	1-8-2010	Repeal	2-1-2010	331-540-0010	4-1-2010	Amend	5-1-2010
330-090-0150	4-30-2010	Amend	6-1-2010	331-540-0020	4-1-2010	Amend	5-1-2010
330-090-0150	5-27-2010	Amend(T)	7-1-2010	331-540-0030	4-1-2010	Amend	5-1-2010
330-090-0150(T)	4-30-2010	Repeal	6-1-2010	331-545-0000	4-1-2010	Amend	5-1-2010
330-090-0350	5-27-2010	Adopt(T)	7-1-2010	331-545-0020	4-1-2010	Amend	5-1-2010
330-090-0450	5-27-2010	Adopt(T)	7-1-2010	331-550-0000	4-1-2010	Amend	5-1-2010
330-112-0000	7-1-2010	Adopt(T)	8-1-2010	331-555-0010	4-1-2010	Amend	5-1-2010
330-112-0010	7-1-2010	Adopt(T)	8-1-2010	331-555-0030	4-1-2010	Amend	5-1-2010
330-112-0020	7-1-2010	Adopt(T)	8-1-2010	331-555-0040	4-1-2010	Amend	5-1-2010
330-112-0030	7-1-2010	Adopt(T)	8-1-2010	331-560-0000	4-1-2010	Amend	5-1-2010
330-112-0040	7-1-2010	Adopt(T)	8-1-2010	331-560-0010	4-1-2010	Amend	5-1-2010
330-112-0050	7-1-2010	Adopt(T)	8-1-2010	331-560-0020	4-1-2010	Amend	5-1-2010
330-112-0060	7-1-2010	Adopt(T)	8-1-2010	331-560-0030	4-1-2010	Amend	5-1-2010
330-112-0070	7-1-2010	Adopt(T)	8-1-2010	331-560-0050	4-1-2010	Repeal	5-1-2010
330-112-0080	7-1-2010	Adopt(T)	8-1-2010	331-560-0060	4-1-2010	Amend	5-1-2010
330-112-0090	7-1-2010	Adopt(T)	8-1-2010	331-565-0000	4-1-2010	Amend	5-1-2010
330-112-0100	7-1-2010	Adopt(T)	8-1-2010	331-565-0020	4-1-2010	Amend	5-1-2010
330-170-0010	7-1-2010	Adopt(T)	8-1-2010	331-565-0025	4-1-2010	Amend	5-1-2010
330-170-0020	7-1-2010	Adopt(T)	8-1-2010	331-565-0030	4-1-2010	Amend	5-1-2010
330-170-0030	7-1-2010	Adopt(T)	8-1-2010	331-565-0040	4-1-2010	Amend	5-1-2010
330-170-0040	7-1-2010	Adopt(T)	8-1-2010	331-565-0050	4-1-2010	Amend	5-1-2010
330-170-0050	7-1-2010	Adopt(T)	8-1-2010	331-565-0060	4-1-2010	Amend	5-1-2010
330-170-0060	7-1-2010	Adopt(T)	8-1-2010	331-565-0075	4-1-2010	Repeal	5-1-2010
330-170-0070	7-1-2010	Adopt(T)	8-1-2010	331-565-0080	4-1-2010	Amend	5-1-2010
331-505-0000	4-1-2010	Amend	5-1-2010	331-565-0085	4-1-2010	Amend	5-1-2010
331-505-0010	4-1-2010	Amend	5-1-2010	331-565-0090	4-1-2010	Adopt	5-1-2010
331-510-0000	4-1-2010	Amend	5-1-2010	331-565-0095	4-1-2010	Adopt	5-1-2010
331-515-0000	4-1-2010	Amend	5-1-2010	331-570-0000	4-1-2010	Amend	5-1-2010
331-515-0010	4-1-2010	Amend	5-1-2010	331-570-0020	4-1-2010	Amend	5-1-2010
331-515-0020	4-1-2010	Amend	5-1-2010	331-575-0000	4-1-2010	Amend	5-1-2010

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331-575-0010	4-1-2010	Amend	5-1-2010	333-015-0165	1-1-2010	Adopt	2-1-2010
331-575-0020	4-1-2010	Amend	5-1-2010	333-017-0000	3-11-2010	Amend	4-1-2010
331-575-0030	4-1-2010	Amend	5-1-2010	333-017-0005	3-11-2010	Amend	4-1-2010
331-575-0050	4-1-2010	Amend	5-1-2010	333-018-0000	3-11-2010	Amend	4-1-2010
331-580-0000	4-1-2010	Amend	5-1-2010	333-018-0010	3-11-2010	Amend	4-1-2010
331-580-0010	4-1-2010	Amend	5-1-2010	333-018-0013	3-11-2010	Adopt	4-1-2010
331-580-0020	4-1-2010	Amend	5-1-2010	333-018-0015	3-11-2010	Amend	4-1-2010
331-580-0030	4-1-2010	Amend	5-1-2010	333-018-0017	3-11-2010	Adopt	4-1-2010
331-585-0000	4-1-2010	Amend	5-1-2010	333-018-0018	3-11-2010	Amend	4-1-2010
331-585-0010	4-1-2010	Amend	5-1-2010	333-019-0017	3-11-2010	Amend	4-1-2010
331-585-0020	4-1-2010	Amend	5-1-2010	333-019-0027	3-11-2010	Amend	4-1-2010
331-585-0030	4-1-2010	Amend	5-1-2010	333-019-0036	3-11-2010	Amend	4-1-2010
331-585-0040	4-1-2010	Amend	5-1-2010	333-026-0030	3-11-2010	Adopt	4-1-2010
331-590-0000	4-1-2010	Amend	5-1-2010	333-029-0025	12-23-2009	Amend	2-1-2010
331-590-0020	4-1-2010	Amend	5-1-2010	333-029-0030	12-23-2009	Repeal	2-1-2010
331-705-0060	12-1-2009	Amend(T)	1-1-2010	333-029-0045	12-23-2009	Amend	2-1-2010
331-705-0060	3-1-2010	Amend	4-1-2010	333-029-0050	12-23-2009	Amend	2-1-2010
331-705-0060(T)	3-1-2010	Repeal	4-1-2010	333-029-0060	12-23-2009	Amend	2-1-2010
331-800-0010	3-15-2010	Amend	4-1-2010	333-029-0070	12-23-2009	Amend	2-1-2010
331-800-0010	5-18-2010	Amend	7-1-2010	333-029-0080	12-23-2009	Amend	2-1-2010
331-800-0020	3-15-2010	Amend	4-1-2010	333-029-0115	12-23-2009	Amend	2-1-2010
331-800-0020	5-18-2010	Amend	7-1-2010	333-050-0020	12-21-2009	Amend(T)	2-1-2010
331-810-0020	3-15-2010	Amend	4-1-2010	333-050-0050	12-21-2009	Amend(T)	2-1-2010
331-810-0020	5-18-2010	Amend	7-1-2010	333-050-0120	12-21-2009	Amend(T)	2-1-2010
331-810-0035	3-15-2010	Repeal	4-1-2010	333-060-0125	12-23-2009	Amend	2-1-2010
331-810-0035	5-18-2010	Repeal	7-1-2010	333-060-0128	12-23-2009	Adopt	2-1-2010
331-810-0040	3-15-2010	Amend	4-1-2010	333-060-0505	12-23-2009	Amend	2-1-2010
331-810-0040	5-18-2010	Amend	7-1-2010	333-060-0510	12-23-2009	Amend	2-1-2010
331-840-0070	3-15-2010	Adopt	4-1-2010	333-061-0005	4-19-2010	Amend	6-1-2010
331-840-0070	5-18-2010	Adopt	7-1-2010	333-061-0010	4-19-2010	Amend	6-1-2010
332-020-0020	4-1-2010	Amend(T)	5-1-2010	333-061-0015	4-19-2010	Amend	6-1-2010
333-002-0040	7-15-2010	Amend(T)	8-1-2010	333-061-0020	4-19-2010	Amend	6-1-2010
333-002-0060	7-15-2010	Amend(T)	8-1-2010	333-061-0030	4-19-2010	Amend	6-1-2010
333-004-0010	6-30-2010	Amend	8-1-2010	333-061-0032	4-19-2010	Amend	6-1-2010
333-004-0060	6-30-2010	Amend	8-1-2010	333-061-0034	4-19-2010	Amend	6-1-2010
333-004-0070	6-30-2010	Amend	8-1-2010	333-061-0036	4-19-2010	Amend	6-1-2010
333-008-0020	7-6-2010	Amend(T)	8-1-2010	333-061-0040	4-19-2010	Amend	6-1-2010
333-011-0106	2-3-2010	Amend	3-1-2010	333-061-0042	4-19-2010	Amend	6-1-2010
333-012-0500	1-14-2010	Amend	2-1-2010	333-061-0043	4-19-2010	Amend	6-1-2010
333-015-0035	1-14-2010	Amend	2-1-2010	333-061-0045	4-19-2010	Amend	6-1-2010
333-015-0040	1-14-2010	Amend	2-1-2010	333-061-0050	4-19-2010	Amend	6-1-2010
333-015-0075	1-14-2010	Amend	2-1-2010	333-061-0055	4-19-2010	Amend	6-1-2010
333-015-0085	1-14-2010	Amend	2-1-2010	333-061-0057	4-19-2010	Amend	6-1-2010
333-015-0100	1-1-2010	Adopt	2-1-2010	333-061-0058	4-19-2010	Amend	6-1-2010
333-015-0105	1-1-2010	Adopt	2-1-2010	333-061-0060	4-19-2010	Amend	6-1-2010
333-015-0110	1-1-2010	Adopt	2-1-2010	333-061-0061	4-19-2010	Amend	6-1-2010
333-015-0115	1-1-2010	Adopt	2-1-2010	333-061-0062	4-19-2010	Amend	6-1-2010
333-015-0120	1-1-2010	Adopt	2-1-2010	333-061-0063	4-19-2010	Amend	6-1-2010
333-015-0125	1-1-2010	Adopt	2-1-2010	333-061-0064	4-19-2010	Amend	6-1-2010
333-015-0130	1-1-2010	Adopt	2-1-2010	333-061-0065	4-19-2010	Amend	6-1-2010
333-015-0135	1-1-2010	Adopt	2-1-2010	333-061-0070	4-19-2010	Amend	6-1-2010
333-015-0140	1-1-2010	Adopt	2-1-2010	333-061-0071	4-19-2010	Amend	6-1-2010
333-015-0145	1-1-2010	Adopt	2-1-2010	333-061-0072	4-19-2010	Amend	6-1-2010
333-015-0150	1-1-2010	Adopt	2-1-2010	333-061-0073	4-19-2010	Amend	6-1-2010
333-015-0155	1-1-2010	Adopt	2-1-2010	333-061-0076	4-19-2010	Amend	6-1-2010
333-015-0160	1-1-2010	Adopt	2-1-2010	333-061-0077	4-19-2010	Amend	6-1-2010

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333-061-0215	4-19-2010	Repeal	6-1-2010	333-092-0090	12-21-2009	Repeal	2-1-2010
333-061-0228	4-19-2010	Amend	6-1-2010	333-092-0095	12-21-2009	Repeal	2-1-2010
333-061-0230	4-19-2010	Amend	6-1-2010	333-100-0020	2-16-2010	Amend	4-1-2010
333-061-0235	4-19-2010	Amend	6-1-2010	333-100-0065	2-16-2010	Amend	4-1-2010
333-061-0245	4-19-2010	Amend	6-1-2010	333-102-0010	2-16-2010	Amend	4-1-2010
333-061-0265	4-19-2010	Amend	6-1-2010	333-102-0015	2-16-2010	Amend	4-1-2010
333-061-0272	3-16-2010	Amend(T)	5-1-2010	333-102-0020	2-16-2010	Repeal	4-1-2010
333-061-0274	3-16-2010	Adopt(T)	5-1-2010	333-102-0035	2-16-2010	Amend	4-1-2010
333-061-0290	4-19-2010	Amend	6-1-2010	333-102-0105	2-16-2010	Amend	4-1-2010
333-061-0295	4-19-2010	Repeal	6-1-2010	333-102-0110	2-16-2010	Amend	4-1-2010
333-061-0305	4-19-2010	Amend	6-1-2010	333-102-0115	2-16-2010	Amend	4-1-2010
333-061-0310	4-19-2010	Amend	6-1-2010	333-102-0190	2-16-2010	Amend	4-1-2010
333-061-0315	4-19-2010	Repeal	6-1-2010	333-102-0245	2-16-2010	Amend	4-1-2010
333-061-0320	4-19-2010	Repeal	6-1-2010	333-102-0285	2-16-2010	Amend	4-1-2010
333-061-0324	4-19-2010	Adopt	6-1-2010	333-102-0290	2-16-2010	Amend	4-1-2010
333-061-0325	4-19-2010	Amend	6-1-2010	333-102-0305	2-16-2010	Amend	4-1-2010
333-061-0330	4-19-2010	Amend	6-1-2010	333-102-0325	2-16-2010	Amend	4-1-2010
333-061-0335	4-19-2010	Amend	6-1-2010	333-102-0340	2-16-2010	Amend	4-1-2010
333-062-0100	12-23-2009	Amend	2-1-2010	333-103-0001	2-16-2010	Amend	4-1-2010
333-062-0103	12-23-2009	Adopt	2-1-2010	333-103-0010	2-16-2010	Amend	4-1-2010
333-070-0075	4-26-2010	Adopt	6-1-2010	333-106-0005	2-16-2010	Amend	4-1-2010
333-070-0080	4-26-2010	Adopt	6-1-2010	333-106-0215	2-16-2010	Amend	4-1-2010
333-070-0085	4-26-2010	Adopt	6-1-2010	333-106-0320	2-16-2010	Amend	4-1-2010
333-070-0090	4-26-2010	Adopt	6-1-2010	333-116-0020	2-16-2010	Amend	4-1-2010
333-070-0095	4-26-2010	Adopt	6-1-2010	333-116-0035	2-16-2010	Amend	4-1-2010
333-070-0100	4-26-2010	Adopt	6-1-2010	333-116-0140	2-16-2010	Amend	4-1-2010
333-070-0105	4-26-2010	Adopt	6-1-2010	333-116-0170	2-16-2010	Amend	4-1-2010
333-070-0110	4-26-2010	Adopt	6-1-2010	333-116-0190	2-16-2010	Amend	4-1-2010
333-070-0115	4-26-2010	Adopt	6-1-2010	333-116-0300	2-16-2010	Amend	4-1-2010
333-070-0120	4-26-2010	Adopt	6-1-2010	333-116-0360	2-16-2010	Amend	4-1-2010
333-070-0125	4-26-2010	Adopt	6-1-2010	333-116-0485	2-16-2010	Adopt	4-1-2010
333-070-0130	4-26-2010	Adopt	6-1-2010	333-116-0660	2-16-2010	Amend	4-1-2010
333-070-0135	4-26-2010	Adopt	6-1-2010	333-116-0670	2-16-2010	Amend	4-1-2010
333-070-0140	4-26-2010	Adopt	6-1-2010	333-116-0683	2-16-2010	Amend	4-1-2010
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333-092-0000	12-21-2009	Repeal	2-1-2010	333-116-0905	2-16-2010	Amend	4-1-2010
333-092-0005	12-21-2009	Repeal	2-1-2010	333-118-0020	2-16-2010	Amend	4-1-2010
333-092-0010	12-21-2009	Repeal	2-1-2010	333-118-0050	2-16-2010	Amend	4-1-2010
333-092-0015	12-21-2009	Repeal	2-1-2010	333-118-0051	2-16-2010	Adopt	4-1-2010
333-092-0020	12-21-2009	Repeal	2-1-2010	333-118-0052	2-16-2010	Adopt	4-1-2010
333-092-0025	12-21-2009	Repeal	2-1-2010	333-118-0053	2-16-2010	Adopt	4-1-2010
333-092-0030	12-21-2009	Repeal	2-1-2010	333-118-0070	2-16-2010	Amend	4-1-2010
333-092-0035	12-21-2009	Repeal	2-1-2010	333-118-0110	2-16-2010	Amend	4-1-2010
333-092-0040	12-21-2009	Repeal	2-1-2010	333-118-0120	2-16-2010	Amend	4-1-2010
333-092-0045	12-21-2009	Repeal	2-1-2010	333-118-0125	2-16-2010	Adopt	4-1-2010
333-092-0050	12-21-2009	Repeal	2-1-2010	333-118-0140	2-16-2010	Amend	4-1-2010
333-092-0055	12-21-2009	Repeal	2-1-2010	333-118-0150	2-16-2010	Amend	4-1-2010
333-092-0060	12-21-2009	Repeal	2-1-2010	333-118-0160	2-16-2010	Amend	4-1-2010
333-092-0065	12-21-2009	Repeal	2-1-2010	333-118-0162	2-16-2010	Adopt	4-1-2010
333-092-0070	12-21-2009	Repeal	2-1-2010	333-118-0190	2-16-2010	Amend	4-1-2010
333-092-0075	12-21-2009	Repeal	2-1-2010	333-118-0200	2-16-2010	Amend	4-1-2010
333-092-0080	12-21-2009	Repeal	2-1-2010	333-119-0010	2-16-2010	Amend	4-1-2010

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333-119-0080	2-16-2010	Amend	4-1-2010	333-265-0140	7-1-2010	Amend	8-1-2010
333-119-0090	2-16-2010	Amend	4-1-2010	333-265-0150	7-1-2010	Amend	8-1-2010
333-119-0100	2-16-2010	Amend	4-1-2010	333-265-0160	7-1-2010	Amend	8-1-2010
333-120-0015	2-16-2010	Amend	4-1-2010	333-265-0180	7-1-2010	Repeal	8-1-2010
333-120-0800	2-16-2010	Amend	4-1-2010	333-270-0010	12-3-2009	Adopt	1-1-2010
333-124-0001	2-16-2010	Adopt	4-1-2010	333-270-0020	12-3-2009	Adopt	1-1-2010
333-124-0010	2-16-2010	Adopt	4-1-2010	333-270-0030	12-3-2009	Adopt	1-1-2010
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333-250-0041	7-1-2010	Amend	8-1-2010	333-270-0070	12-3-2009	Adopt	1-1-2010
333-250-0042	7-1-2010	Amend	8-1-2010	333-270-0080	12-3-2009	Adopt	1-1-2010
333-250-0043	7-1-2010	Amend	8-1-2010	333-300-0000	12-21-2009	Repeal	2-1-2010
333-250-0044	7-1-2010	Amend	8-1-2010	333-540-0005	7-1-2010	Adopt	8-1-2010
333-250-0045	7-1-2010	Amend	8-1-2010	333-540-0010	7-1-2010	Adopt	8-1-2010
333-250-0046	7-1-2010	Amend	8-1-2010	333-540-0015	7-1-2010	Adopt	8-1-2010
333-250-0047	7-1-2010	Amend	8-1-2010	333-540-0020	7-1-2010	Adopt	8-1-2010
333-250-0048	7-1-2010	Amend	8-1-2010	333-540-0025	7-1-2010	Adopt	8-1-2010
333-250-0049	7-1-2010	Amend	8-1-2010	333-540-0030	7-1-2010	Adopt	8-1-2010
333-250-0060	7-1-2010	Amend	8-1-2010	333-540-0035	7-1-2010	Adopt	8-1-2010
333-250-0070	7-1-2010	Amend	8-1-2010	333-540-0040	7-1-2010	Adopt	8-1-2010
333-255-0000	7-1-2010	Amend	8-1-2010	333-540-0045	7-1-2010	Adopt	8-1-2010
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333-255-0030	7-1-2010	Amend	8-1-2010	333-540-0055	7-1-2010	Adopt	8-1-2010
333-255-0060	7-1-2010	Amend	8-1-2010	333-540-0060	7-1-2010	Adopt	8-1-2010
333-255-0070	7-1-2010	Amend	8-1-2010	333-540-0065	7-1-2010	Adopt	8-1-2010
333-255-0071	7-1-2010	Amend	8-1-2010	333-540-0070	7-1-2010	Adopt	8-1-2010
333-255-0072	7-1-2010	Amend	8-1-2010	333-540-0075	7-1-2010	Adopt	8-1-2010
333-255-0073	7-1-2010	Amend	8-1-2010	333-540-0080	7-1-2010	Adopt	8-1-2010
333-255-0081	7-1-2010	Amend	8-1-2010	333-540-0085	7-1-2010	Adopt	8-1-2010
333-255-0082	7-1-2010	Amend	8-1-2010	333-540-0090	7-1-2010	Adopt	8-1-2010
333-255-0091	7-1-2010	Amend	8-1-2010	334-001-0055	4-12-2010	Adopt	5-1-2010
333-255-0092	7-1-2010	Amend	8-1-2010	335-070-0065	11-16-2009	Amend	1-1-2010
333-265-0000	7-1-2010	Amend	8-1-2010	335-095-0060	11-16-2009	Amend	1-1-2010
333-265-0012	7-1-2010	Amend	8-1-2010	337-001-0000	6-15-2010	Amend	7-1-2010
333-265-0014	7-1-2010	Amend	8-1-2010	337-001-0005	6-15-2010	Amend	7-1-2010
333-265-0015	7-1-2010	Adopt	8-1-2010	337-010-0006	6-15-2010	Amend	7-1-2010
333-265-0016	7-1-2010	Amend	8-1-2010	337-010-0007	6-15-2010	Adopt	7-1-2010
333-265-0018	7-1-2010	Amend	8-1-2010	337-010-0008	6-15-2010	Amend	7-1-2010
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333-265-0022	7-1-2010	Amend	8-1-2010	337-010-0010	6-15-2010	Amend	7-1-2010
333-265-0023	7-1-2010	Amend	8-1-2010	337-010-0011	6-15-2010	Amend	7-1-2010
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333-265-0040	7-1-2010	Amend	8-1-2010	337-010-0014	6-15-2010	Adopt	7-1-2010
333-265-0050	7-1-2010	Amend	8-1-2010	337-010-0015	6-15-2010	Amend	7-1-2010
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333-265-0080	7-1-2010	Amend	8-1-2010	337-010-0023	6-15-2010	Adopt	7-1-2010
333-265-0083	7-1-2010	Adopt	8-1-2010	337-010-0025	6-15-2010	Amend	7-1-2010
333-265-0085	7-1-2010	Adopt	8-1-2010	337-010-0026	6-15-2010	Adopt	7-1-2010
333-265-0087	7-1-2010	Adopt	8-1-2010	337-010-0030	6-15-2010	Amend	7-1-2010
333-265-0090	7-1-2010	Amend	8-1-2010	337-010-0031	6-15-2010	Amend	7-1-2010
333-265-0100	7-1-2010	Amend	8-1-2010	337-010-0036	6-15-2010	Repeal	7-1-2010
333-265-0105	7-1-2010	Adopt	8-1-2010	337-010-0045	6-15-2010	Amend	7-1-2010

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337-010-0060	6-15-2010	Repeal	7-1-2010	340-228-0621	12-16-2009	Amend	2-1-2010
337-010-0061	6-15-2010	Repeal	7-1-2010	340-228-0623	12-16-2009	Amend	2-1-2010
337-010-0065	6-15-2010	Repeal	7-1-2010	340-228-0625	12-16-2009	Amend	2-1-2010
337-010-0075	6-15-2010	Repeal	7-1-2010	340-228-0627	12-16-2009	Amend	2-1-2010
337-020-0010	6-15-2010	Repeal	7-1-2010	340-228-0639	12-16-2009	Adopt	2-1-2010
337-020-0015	6-15-2010	Amend	7-1-2010	340-238-0040	12-16-2009	Amend	2-1-2010
337-020-0040	6-15-2010	Amend	7-1-2010	340-244-0030	12-16-2009	Amend	2-1-2010
337-021-0005	6-15-2010	Amend	7-1-2010	340-244-0220	12-16-2009	Amend	2-1-2010
337-021-0010	6-15-2010	Amend	7-1-2010	340-244-0238	12-16-2009	Amend	2-1-2010
337-021-0020	6-15-2010	Amend	7-1-2010	340-244-0240	12-16-2009	Amend	2-1-2010
337-021-0030	6-15-2010	Amend	7-1-2010	340-244-0242	12-16-2009	Amend	2-1-2010
337-021-0040	6-15-2010	Amend	7-1-2010	340-244-0246	12-16-2009	Amend	2-1-2010
337-021-0070	6-15-2010	Amend	7-1-2010	340-252-0020	3-5-2010	Repeal	4-1-2010
337-030-0002	6-15-2010	Adopt	7-1-2010	340-252-0030	3-5-2010	Amend	4-1-2010
337-030-0005	6-15-2010	Adopt	7-1-2010	340-252-0040	3-5-2010	Repeal	4-1-2010
337-030-0010	6-15-2010	Adopt	7-1-2010	340-252-0050	3-5-2010	Repeal	4-1-2010
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337-030-0025	6-15-2010	Adopt	7-1-2010	340-252-0080	3-5-2010	Repeal	4-1-2010
339-005-0000	3-1-2010	Amend	2-1-2010	340-252-0090	3-5-2010	Repeal	4-1-2010
340-045-0033	1-22-2010	Amend	3-1-2010	340-252-0100	3-5-2010	Repeal	4-1-2010
340-045-0100	7-6-2010	Adopt	8-1-2010	340-252-0110	3-5-2010	Repeal	4-1-2010
340-054-0010	5-4-2010	Amend(T)	6-1-2010	340-252-0120	3-5-2010	Repeal	4-1-2010
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340-054-0065	5-4-2010	Amend(T)	6-1-2010	340-252-0140	3-5-2010	Repeal	4-1-2010
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340-093-0280	5-14-2010	Adopt	6-1-2010	340-252-0190	3-5-2010	Repeal	4-1-2010
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340-200-0040	3-5-2010	Amend	4-1-2010	340-252-0250	3-5-2010	Repeal	4-1-2010
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340-202-0060	5-21-2010	Amend	7-1-2010	340-252-0270	3-5-2010	Repeal	4-1-2010
340-202-0090	5-21-2010	Amend	7-1-2010	340-252-0280	3-5-2010	Repeal	4-1-2010
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340-216-0064	12-16-2009	Amend	2-1-2010	350-090-0110	6-1-2010	Repeal	6-1-2010
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350-110-0030	6-1-2010	Repeal	6-1-2010	350-110-0590	6-1-2010	Repeal	6-1-2010
350-110-0040	6-1-2010	Repeal	6-1-2010	350-110-0600	6-1-2010	Repeal	6-1-2010
350-110-0050	6-1-2010	Repeal	6-1-2010	350-110-0610	6-1-2010	Repeal	6-1-2010
350-110-0060	6-1-2010	Repeal	6-1-2010	350-110-0620	6-1-2010	Repeal	6-1-2010
350-110-0070	6-1-2010	Repeal	6-1-2010	407-007-0000	1-1-2010	Amend	2-1-2010
350-110-0080	6-1-2010	Repeal	6-1-2010	407-007-0010	1-1-2010	Amend	2-1-2010
350-110-0090	6-1-2010	Repeal	6-1-2010	407-007-0020	1-1-2010	Amend	2-1-2010
350-110-0100	6-1-2010	Repeal	6-1-2010	407-007-0030	1-1-2010	Amend	2-1-2010
350-110-0110	6-1-2010	Repeal	6-1-2010	407-007-0040	1-1-2010	Amend	2-1-2010
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350-110-0130	6-1-2010	Repeal	6-1-2010	407-007-0060	1-1-2010	Amend	2-1-2010
350-110-0140	6-1-2010	Repeal	6-1-2010	407-007-0065	1-1-2010	Adopt	2-1-2010
350-110-0150	6-1-2010	Repeal	6-1-2010	407-007-0070	1-1-2010	Amend	2-1-2010
350-110-0160	6-1-2010	Repeal	6-1-2010	407-007-0075	1-1-2010	Adopt	2-1-2010
350-110-0170	6-1-2010	Repeal	6-1-2010	407-007-0080	1-1-2010	Amend	2-1-2010
350-110-0180	6-1-2010	Repeal	6-1-2010	407-007-0090	1-1-2010	Amend	2-1-2010
350-110-0190	6-1-2010	Repeal	6-1-2010	407-007-0100	1-1-2010	Amend	2-1-2010
350-110-0200	6-1-2010	Repeal	6-1-2010	407-007-0200	1-1-2010	Amend	2-1-2010
350-110-0210	6-1-2010	Repeal	6-1-2010	407-007-0210	1-1-2010	Amend	2-1-2010
350-110-0220	6-1-2010	Repeal	6-1-2010	407-007-0220	1-1-2010	Amend	2-1-2010
350-110-0230	6-1-2010	Repeal	6-1-2010	407-007-0230	1-1-2010	Amend	2-1-2010
350-110-0240	6-1-2010	Repeal	6-1-2010	407-007-0240	1-1-2010	Amend	2-1-2010
350-110-0250	6-1-2010	Repeal	6-1-2010	407-007-0250	1-1-2010	Amend	2-1-2010
350-110-0260	6-1-2010	Repeal	6-1-2010	407-007-0275	5-5-2010	Adopt(T)	6-1-2010
350-110-0270	6-1-2010	Repeal	6-1-2010	407-007-0280	1-1-2010	Amend	2-1-2010
350-110-0280	6-1-2010	Repeal	6-1-2010	407-007-0290	1-1-2010	Amend	2-1-2010
350-110-0290	6-1-2010	Repeal	6-1-2010	407-007-0300	1-1-2010	Amend	2-1-2010
350-110-0300	6-1-2010	Repeal	6-1-2010	407-007-0315	1-1-2010	Adopt	2-1-2010
350-110-0310	6-1-2010	Repeal	6-1-2010	407-007-0320	1-1-2010	Amend	2-1-2010
350-110-0320	6-1-2010	Repeal	6-1-2010	407-007-0325	1-1-2010	Adopt	2-1-2010
350-110-0330	6-1-2010	Repeal	6-1-2010	407-007-0330	1-1-2010	Amend	2-1-2010
350-110-0340	6-1-2010	Repeal	6-1-2010	407-007-0340	1-1-2010	Amend	2-1-2010
350-110-0350	6-1-2010	Repeal	6-1-2010	407-007-0350	1-1-2010	Amend	2-1-2010
350-110-0360	6-1-2010	Repeal	6-1-2010	407-007-0355	1-1-2010	Repeal	2-1-2010
350-110-0370	6-1-2010	Repeal	6-1-2010	407-007-0370	1-1-2010	Amend	2-1-2010
350-110-0380	6-1-2010	Repeal	6-1-2010	407-007-0400	3-29-2010	Adopt	5-1-2010
350-110-0390	6-1-2010	Repeal	6-1-2010	407-007-0400(T)	3-29-2010	Repeal	5-1-2010
350-110-0400	6-1-2010	Repeal	6-1-2010	407-007-0410	3-29-2010	Adopt	5-1-2010
350-110-0410	6-1-2010	Repeal	6-1-2010	407-007-0410(T)	3-29-2010	Repeal	5-1-2010
350-110-0420	6-1-2010	Repeal	6-1-2010	407-007-0420	3-29-2010	Adopt	5-1-2010
350-110-0430	6-1-2010	Repeal	6-1-2010	407-007-0420(T)	3-29-2010	Repeal	5-1-2010
350-110-0440	6-1-2010	Repeal	6-1-2010	407-007-0430	3-29-2010	Adopt	5-1-2010
350-110-0450	6-1-2010	Repeal	6-1-2010	407-007-0430(T)	3-29-2010	Repeal	5-1-2010
350-110-0460	6-1-2010	Repeal	6-1-2010	407-007-0440	1-8-2010	Adopt(T)	2-1-2010
350-110-0470	6-1-2010	Repeal	6-1-2010	407-007-0440	3-29-2010	Adopt	5-1-2010
350-110-0480	6-1-2010	Repeal	6-1-2010	407-007-0440(T)	3-29-2010	Repeal	5-1-2010
350-110-0490	6-1-2010	Repeal	6-1-2010	407-007-0450	3-29-2010	Adopt	5-1-2010
350-110-0500	6-1-2010	Repeal	6-1-2010	407-007-0450(T)	3-29-2010	Repeal	5-1-2010
350-110-0510	6-1-2010	Repeal	6-1-2010	407-007-0460	3-29-2010	Adopt	5-1-2010
350-110-0520	6-1-2010	Repeal	6-1-2010	407-007-0460(T)	3-29-2010	Repeal	5-1-2010
350-110-0530	6-1-2010	Repeal	6-1-2010	407-043-0010	1-1-2010	Amend	2-1-2010
350-110-0540	6-1-2010	Repeal	6-1-2010	407-043-0010(T)	1-1-2010	Repeal	2-1-2010
350-110-0550	6-1-2010	Repeal	6-1-2010	407-045-0250	6-29-2010	Amend	8-1-2010
350-110-0560	6-1-2010	Repeal	6-1-2010	407-045-0260	1-1-2010	Amend(T)	2-1-2010

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407-045-0260(T)	6-29-2010	Repeal	8-1-2010	409-040-0110	1-1-2010	Adopt	2-1-2010
407-045-0280	6-29-2010	Amend	8-1-2010	409-040-0115	1-1-2010	Adopt	2-1-2010
407-045-0290	1-1-2010	Amend(T)	2-1-2010	410-050-0861	7-1-2010	Amend	8-1-2010
407-045-0290	6-29-2010	Amend	8-1-2010	410-120-0030	1-1-2010	Amend	1-1-2010
407-045-0290(T)	6-29-2010	Repeal	8-1-2010	410-120-0030	7-1-2010	Amend	8-1-2010
407-045-0300	6-29-2010	Amend	8-1-2010	410-120-0030(T)	1-1-2010	Repeal	1-1-2010
407-045-0310	6-29-2010	Amend	8-1-2010	410-120-0045	7-1-2010	Adopt	7-1-2010
407-045-0320	6-29-2010	Amend	8-1-2010	410-120-1200	1-1-2010	Amend	1-1-2010
407-045-0330	6-29-2010	Amend	8-1-2010	410-120-1210	1-1-2010	Amend	1-1-2010
407-045-0340	6-29-2010	Amend	8-1-2010	410-120-1230	1-1-2010	Amend	1-1-2010
407-045-0350	1-1-2010	Amend(T)	2-1-2010	410-120-1295	12-4-2009	Amend(T)	1-1-2010
407-045-0350	6-29-2010	Amend	8-1-2010	410-120-1295	1-1-2010	Amend	1-1-2010
407-045-0350(T)	6-29-2010	Repeal	8-1-2010	410-120-1295	3-26-2010	Amend	5-1-2010
407-045-0360	6-29-2010	Amend	8-1-2010	410-120-1295(T)	12-4-2009	Suspend	1-1-2010
407-045-0370	6-29-2010	Adopt	8-1-2010	410-120-1340	1-1-2010	Amend	1-1-2010
407-045-0800	7-1-2010	Amend	8-1-2010	410-120-1380	1-1-2010	Amend	1-1-2010
407-045-0810	7-1-2010	Amend	8-1-2010	410-120-1570	1-1-2010	Amend	1-1-2010
407-045-0820	7-1-2010	Amend	8-1-2010	410-120-1600	1-1-2010	Amend	1-1-2010
407-045-0820	7-12-2010	Amend(T)	8-1-2010	410-121-0000	1-1-2010	Amend	1-1-2010
407-045-0830	7-1-2010	Amend	8-1-2010	410-121-0000	7-1-2010	Amend	7-1-2010
407-045-0850	7-1-2010	Amend	8-1-2010	410-121-0030	1-1-2010	Amend	1-1-2010
407-045-0860	7-1-2010	Amend	8-1-2010	410-121-0030	7-1-2010	Amend	7-1-2010
407-045-0870	7-1-2010	Amend	8-1-2010	410-121-0032	1-1-2010	Amend	1-1-2010
407-045-0880	7-1-2010	Amend	8-1-2010	410-121-0040	1-1-2010	Amend	1-1-2010
407-045-0890	7-1-2010	Amend	8-1-2010	410-121-0040	7-1-2010	Amend	7-1-2010
407-045-0900	7-1-2010	Amend	8-1-2010	410-121-0060	1-1-2010	Amend	1-1-2010
407-045-0910	7-1-2010	Amend	8-1-2010	410-121-0100	1-1-2010	Amend	1-1-2010
407-045-0920	7-1-2010	Amend	8-1-2010	410-121-0100	7-1-2010	Amend	7-1-2010
407-045-0930	7-1-2010	Amend	8-1-2010	410-121-0135	1-1-2010	Amend	1-1-2010
407-045-0940	7-1-2010	Amend	8-1-2010	410-121-0144	7-1-2010	Repeal	7-1-2010
407-045-0950	7-1-2010	Amend	8-1-2010	410-121-0145	2-5-2010	Amend	3-1-2010
407-045-0960	7-1-2010	Amend	8-1-2010	410-121-0146	4-1-2010	Amend(T)	5-1-2010
407-045-0970	7-1-2010	Amend	8-1-2010	410-121-0146	7-1-2010	Amend	7-1-2010
407-045-0980	7-1-2010	Amend	8-1-2010	410-121-0147	7-1-2010	Amend	7-1-2010
409-023-0000	7-1-2010	Amend	8-1-2010	410-121-0185	7-1-2010	Amend	7-1-2010
409-023-0010	7-1-2010	Amend	8-1-2010	410-121-0420	1-1-2010	Amend	1-1-2010
409-024-0000	7-1-2010	Adopt	8-1-2010	410-122-0010	7-1-2010	Amend	7-1-2010
409-024-0110	7-1-2010	Adopt	8-1-2010	410-122-0020	7-1-2010	Amend	7-1-2010
409-024-0120	7-1-2010	Adopt	8-1-2010	410-122-0040	7-1-2010	Amend	7-1-2010
409-024-0130	7-1-2010	Adopt	8-1-2010	410-122-0055	7-1-2010	Amend	7-1-2010
409-025-0100	3-1-2010	Adopt	4-1-2010	410-122-0080	7-1-2010	Amend	7-1-2010
409-025-0110	3-1-2010	Adopt	4-1-2010	410-122-0182	1-1-2010	Amend	1-1-2010
409-025-0120	3-1-2010	Adopt	4-1-2010	410-122-0184	7-1-2010	Amend	7-1-2010
409-025-0130	3-1-2010	Adopt	4-1-2010	410-122-0202	7-1-2010	Amend	7-1-2010
409-025-0140	3-1-2010	Adopt	4-1-2010	410-122-0203	1-1-2010	Amend	1-1-2010
409-025-0150	3-1-2010	Adopt	4-1-2010	410-122-0203	7-1-2010	Amend	7-1-2010
409-025-0160	3-1-2010	Adopt	4-1-2010	410-122-0205	7-1-2010	Amend	7-1-2010
409-025-0170	3-1-2010	Adopt	4-1-2010	410-122-0207	7-1-2010	Amend	7-1-2010
409-026-0100	1-1-2010	Adopt	2-1-2010	410-122-0208	7-1-2010	Amend	7-1-2010
409-026-0110	1-1-2010	Adopt	2-1-2010	410-122-0210	7-1-2010	Amend	7-1-2010
409-026-0120	1-1-2010	Adopt	2-1-2010	410-122-0211	7-1-2010	Amend	7-1-2010
409-026-0120	1-1-2010	Adopt	2-1-2010	410-122-0280	7-1-2010	Amend	7-1-2010
409-026-0140	1-1-2010	Adopt	2-1-2010	410-122-0325	7-1-2010	Amend	7-1-2010
409-030-0065	4-21-2010	Amend(T)	6-1-2010	410-122-0340	7-1-2010	Amend	7-1-2010
409-040-0100	1-1-2010	Adopt	2-1-2010	410-122-0540	7-1-2010	Amend	7-1-2010

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410-122-0625	7-1-2010	Amend	7-1-2010	410-138-0440	7-1-2010	Adopt	8-1-2010
410-122-0630	7-1-2010	Amend	7-1-2010	410-138-0460	7-1-2010	Adopt	8-1-2010
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410-122-0660	1-1-2010	Amend	1-1-2010	410-138-0530	7-1-2010	Repeal	8-1-2010
410-122-0662	1-1-2010	Amend	1-1-2010	410-138-0540	7-1-2010	Amend	8-1-2010
410-122-0662	7-1-2010	Amend	7-1-2010	410-138-0560	1-1-2010	Amend	1-1-2010
410-122-0680	7-1-2010	Amend	7-1-2010	410-138-0560	7-1-2010	Amend	8-1-2010
410-122-0720	7-1-2010	Amend	7-1-2010	410-138-0600	7-1-2010	Amend	8-1-2010
410-123-1000	1-1-2010	Amend	1-1-2010	410-138-0610	7-1-2010	Repeal	8-1-2010
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410-123-1160	1-1-2010	Amend	1-1-2010	410-138-0640	7-1-2010	Amend	8-1-2010
410-123-1160	7-1-2010	Amend	7-1-2010	410-138-0660	7-1-2010	Amend	8-1-2010
410-123-1220	1-1-2010	Amend	1-1-2010	410-138-0680	1-1-2010	Amend	1-1-2010
410-123-1220	7-1-2010	Amend	7-1-2010	410-138-0700	7-1-2010	Amend	8-1-2010
410-123-1260	1-1-2010	Amend	1-1-2010	410-138-0710	7-1-2010	Amend	8-1-2010
410-123-1260	7-1-2010	Amend	7-1-2010	410-138-0720	1-1-2010	Repeal	1-1-2010
410-130-0200	7-1-2010	Amend	7-1-2010	410-138-0740	7-1-2010	Amend	8-1-2010
410-130-0220	7-1-2010	Amend	7-1-2010	410-138-0760	7-1-2010	Amend	8-1-2010
410-130-0245	7-1-2010	Amend	7-1-2010	410-138-0780	7-1-2010	Amend	8-1-2010
410-130-0255	7-1-2010	Amend	7-1-2010	410-140-0050	1-1-2010	Amend	1-1-2010
410-130-0595	4-15-2010	Amend(T)	5-1-2010	410-140-0115	1-1-2010	Repeal	1-1-2010
410-136-0245	1-1-2010	Adopt	1-1-2010	410-140-0140	1-1-2010	Amend	1-1-2010
410-136-0245	4-1-2010	Amend(T)	5-1-2010	410-140-0160	1-1-2010	Amend	1-1-2010
410-136-0245	7-1-2010	Amend	8-1-2010	410-140-0200	1-1-2010	Amend	1-1-2010
410-138-0000	7-1-2010	Amend	8-1-2010	410-140-0260	1-1-2010	Amend	1-1-2010
410-138-0005	7-1-2010	Amend	8-1-2010	410-141-0000	1-1-2010	Amend	1-1-2010
410-138-0007	7-1-2010	Amend	8-1-2010	410-141-0000	7-1-2010	Amend	7-1-2010
410-138-0009	1-1-2010	Amend	1-1-2010	410-141-0070	7-1-2010	Amend	7-1-2010
410-138-0009	7-1-2010	Amend	8-1-2010	410-141-0160	7-1-2010	Amend	7-1-2010
410-138-0020	1-1-2010	Amend	1-1-2010	410-141-0200	7-1-2010	Amend	7-1-2010
410-138-0020	7-1-2010	Amend	8-1-2010	410-141-0220	7-1-2010	Amend	7-1-2010
410-138-0040	7-1-2010	Amend	8-1-2010	410-141-0261	1-1-2010	Amend	1-1-2010
410-138-0060	7-1-2010	Amend	8-1-2010	410-141-0263	1-1-2010	Amend	1-1-2010
410-138-0080	7-1-2010	Amend	8-1-2010	410-141-0264	1-1-2010	Amend	1-1-2010
410-138-0300	11-16-2009	Amend(T)	1-1-2010	410-141-0300	7-1-2010	Amend	7-1-2010
410-138-0300	1-1-2010	Amend	1-1-2010	410-141-0405	1-1-2010	Amend	1-1-2010
410-138-0300	7-1-2010	Amend	8-1-2010	410-141-0405	7-1-2010	Amend	7-1-2010
410-138-0300(T)	1-1-2010	Repeal	1-1-2010	410-141-0407	7-1-2010	Amend	7-1-2010
410-138-0320	1-1-2010	Repeal	1-1-2010	410-141-0420	1-1-2010	Amend	1-1-2010
410-138-0340	11-16-2009	Suspend	1-1-2010	410-141-0420	7-1-2010	Amend	7-1-2010
410-138-0340	1-1-2010	Repeal	1-1-2010	410-141-0480	6-3-2010	Amend(T)	7-1-2010
410-138-0360	11-16-2009	Amend(T)	1-1-2010	410-141-0520	1-1-2010	Amend(T)	1-1-2010
410-138-0360	1-1-2010	Amend	1-1-2010	410-141-0520	1-15-2010	Amend(T)	2-1-2010
410-138-0360	7-1-2010	Amend	8-1-2010	410-141-0520	3-17-2010	Amend	4-1-2010
410-138-0360(T)	1-1-2010	Repeal	1-1-2010	410-141-0520	4-1-2010	Amend(T)	5-1-2010
410-138-0380	11-16-2009	Amend(T)	1-1-2010	410-141-0520	4-26-2010	Amend	6-1-2010
410-138-0380	1-1-2010	Amend	1-1-2010	410-141-0520(T)	1-1-2010	Suspend	1-1-2010
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410-138-0380(T)	1-1-2010	Repeal	1-1-2010	410-141-0520(T)	3-17-2010	Repeal	4-1-2010
410-138-0390	11-16-2009	Adopt(T)	1-1-2010	410-141-0520(T)	4-26-2010	Repeal	6-1-2010
410-138-0390	1-1-2010	Adopt	1-1-2010	410-141-0740	7-1-2010	Amend	7-1-2010
410-138-0390	7-1-2010	Amend	8-1-2010	410-146-0021	1-1-2010	Amend	1-1-2010
410-138-0390(T)	1-1-2010	Repeal	1-1-2010	410-146-0085	1-1-2010	Amend	1-1-2010
410-138-0400	7-1-2010	Adopt	8-1-2010	410-146-0240	1-1-2010	Amend	1-1-2010

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410-147-0120	1-1-2010	Amend	1-1-2010	411-021-0020	7-1-2010	Repeal	8-1-2010
410-147-0320	1-1-2010	Amend	1-1-2010	411-021-0025	7-1-2010	Repeal	8-1-2010
410-147-0365	5-1-2010	Amend(T)	5-1-2010	411-031-0020	5-30-2010	Amend	7-1-2010
410-147-0365	7-1-2010	Amend	8-1-2010	411-031-0020	7-1-2010	Amend(T)	8-1-2010
410-147-0365(T)	7-1-2010	Repeal	8-1-2010	411-031-0030	5-30-2010	Amend	7-1-2010
410-147-0400	1-1-2010	Amend	1-1-2010	411-031-0040	12-1-2009	Amend(T)	1-1-2010
410-147-0620	1-1-2010	Repeal	1-1-2010	411-031-0040	5-30-2010	Amend	7-1-2010
410-149-0000	1-1-2010	Repeal	1-1-2010	411-031-0040	7-1-2010	Amend(T)	8-1-2010
410-149-0020	1-1-2010	Repeal	1-1-2010	411-031-0040(T)	5-30-2010	Repeal	7-1-2010
410-149-0040	1-1-2010	Repeal	1-1-2010	411-031-0050	5-30-2010	Amend	7-1-2010
410-149-0060	1-1-2010	Repeal	1-1-2010	411-032-0001	6-30-2010	Amend(T)	8-1-2010
410-149-0080	1-1-2010	Repeal	1-1-2010	411-032-0001	7-1-2010	Amend(T)	8-1-2010
410-150-0080	1-1-2010	Amend	1-1-2010	411-032-0001(T)	7-1-2010	Suspend	8-1-2010
410-150-0120	1-1-2010	Repeal	1-1-2010	411-034-0000	6-30-2010	Amend(T)	8-1-2010
410-150-0160	1-1-2010	Repeal	1-1-2010	411-050-0400	1-1-2010	Amend(T)	2-1-2010
410-150-0240	1-1-2010	Repeal	1-1-2010	411-050-0400	7-1-2010	Amend	8-1-2010
411-001-0100	1-1-2010	Amend	2-1-2010	411-050-0400(T)	7-1-2010	Repeal	8-1-2010
411-001-0110	1-1-2010	Amend	2-1-2010	411-050-0405	7-1-2010	Amend	8-1-2010
411-001-0115	1-1-2010	Adopt	2-1-2010	411-050-0408	7-1-2010	Amend	8-1-2010
411-001-0118	1-1-2010	Adopt	2-1-2010	411-050-0410	1-1-2010	Amend(T)	2-1-2010
411-001-0120	1-1-2010	Amend	2-1-2010	411-050-0410	7-1-2010	Amend	8-1-2010
411-020-0000	7-1-2010	Amend	8-1-2010	411-050-0410(T)	7-1-2010	Repeal	8-1-2010
411-020-0002	1-1-2010	Amend(T)	2-1-2010	411-050-0412	1-1-2010	Amend(T)	2-1-2010
411-020-0002	7-1-2010	Amend	8-1-2010	411-050-0412	3-11-2010	Amend(T)	4-1-2010
411-020-0002(T)	7-1-2010	Repeal	8-1-2010	411-050-0412	7-1-2010	Amend	8-1-2010
411-020-0010	7-1-2010	Amend	8-1-2010	411-050-0412(T)	3-11-2010	Suspend	4-1-2010
411-020-0015	7-1-2010	Amend	8-1-2010	411-050-0412(T)	7-1-2010	Repeal	8-1-2010
411-020-0020	1-1-2010	Amend(T)	2-1-2010	411-050-0415	1-1-2010	Amend(T)	2-1-2010
411-020-0020	7-1-2010	Amend	8-1-2010	411-050-0415	7-1-2010	Amend	8-1-2010
411-020-0020(T)	7-1-2010	Repeal	8-1-2010	411-050-0415(T)	7-1-2010	Repeal	8-1-2010
411-020-0025	1-1-2010	Adopt(T)	2-1-2010	411-050-0420	1-1-2010	Amend(T)	2-1-2010
411-020-0025	7-1-2010	Adopt	8-1-2010	411-050-0420	7-1-2010	Amend	8-1-2010
411-020-0025(T)	7-1-2010	Repeal	8-1-2010	411-050-0420(T)	7-1-2010	Repeal	8-1-2010
411-020-0030	1-1-2010	Amend(T)	2-1-2010	411-050-0430	7-1-2010	Amend	8-1-2010
411-020-0030	7-1-2010	Amend	8-1-2010	411-050-0435	7-1-2010	Amend	8-1-2010
411-020-0030(T)	7-1-2010	Repeal	8-1-2010	411-050-0440	1-1-2010	Amend(T)	2-1-2010
411-020-0040	7-1-2010	Amend	8-1-2010	411-050-0440	7-1-2010	Amend	8-1-2010
411-020-0060	7-1-2010	Amend	8-1-2010	411-050-0440(T)	7-1-2010	Repeal	8-1-2010
411-020-0070	7-1-2010	Amend	8-1-2010	411-050-0443	7-1-2010	Amend	8-1-2010
411-020-0080	7-1-2010	Amend	8-1-2010	411-050-0444	1-1-2010	Amend(T)	2-1-2010
411-020-0085	1-1-2010	Adopt(T)	2-1-2010	411-050-0444	7-1-2010	Amend	8-1-2010
411-020-0085	7-1-2010	Adopt	8-1-2010	411-050-0444(T)	7-1-2010	Repeal	8-1-2010
411-020-0085(T)	7-1-2010	Repeal	8-1-2010	411-050-0445	7-1-2010	Amend	8-1-2010
411-020-0090	7-1-2010	Amend	8-1-2010	411-050-0447	7-1-2010	Amend	8-1-2010
411-020-0100	1-1-2010	Amend(T)	2-1-2010	411-050-0455	1-1-2010	Amend(T)	2-1-2010
411-020-0100	7-1-2010	Amend	8-1-2010	411-050-0455	7-1-2010	Amend	8-1-2010
411-020-0100(T)	7-1-2010	Repeal	8-1-2010	411-050-0455(T)	7-1-2010	Repeal	8-1-2010
411-020-0110	7-1-2010	Amend	8-1-2010	411-050-0460	1-1-2010	Amend(T)	2-1-2010
411-020-0120	1-1-2010	Amend(T)	2-1-2010	411-050-0460	7-1-2010	Amend	8-1-2010
411-020-0120	7-1-2010	Amend	8-1-2010	411-050-0460(T)	7-1-2010	Repeal	8-1-2010
411-020-0120(T)	7-1-2010	Repeal	8-1-2010	411-050-0465	7-1-2010	Amend	8-1-2010
411-020-0130	7-1-2010	Amend	8-1-2010	411-050-0480	1-1-2010	Amend(T)	2-1-2010
411-021-0000	7-1-2010	Repeal	8-1-2010	411-050-0480	7-1-2010	Amend	8-1-2010
411-021-0005	7-1-2010	Repeal	8-1-2010	411-050-0480(T)	7-1-2010	Repeal	8-1-2010
411-021-0010	7-1-2010	Repeal	8-1-2010	411-050-0481	1-1-2010	Amend(T)	2-1-2010

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411-050-0481	7-1-2010	Amend	8-1-2010	411-085-0005	7-1-2010	Amend	8-1-2010
411-050-0481(T)	7-1-2010	Repeal	8-1-2010	411-085-0005(T)	7-1-2010	Repeal	8-1-2010
411-050-0487	1-1-2010	Amend(T)	2-1-2010	411-085-0020	1-1-2010	Amend	2-1-2010
411-050-0487	7-1-2010	Amend	8-1-2010	411-085-0020	1-1-2010	Amend(T)	2-1-2010
411-050-0487(T)	7-1-2010	Repeal	8-1-2010	411-085-0020	7-1-2010	Amend	8-1-2010
411-050-0490	7-1-2010	Amend	8-1-2010	411-085-0020(T)	7-1-2010	Repeal	8-1-2010
411-050-0491	7-1-2010	Amend	8-1-2010	411-089-0030	1-1-2010	Amend(T)	2-1-2010
411-054-0005	1-1-2010	Amend(T)	2-1-2010	411-089-0030	7-1-2010	Amend	8-1-2010
411-054-0005	7-1-2010	Amend	8-1-2010	411-089-0030(T)	7-1-2010	Repeal	8-1-2010
411-054-0013	7-1-2010	Amend	8-1-2010	411-089-0070	7-1-2010	Adopt	8-1-2010
411-054-0016	1-1-2010	Amend(T)	2-1-2010	411-089-0075	1-1-2010	Adopt(T)	2-1-2010
411-054-0016	7-1-2010	Amend	8-1-2010	411-089-0075	7-1-2010	Adopt	8-1-2010
411-054-0016(T)	7-1-2010	Repeal	8-1-2010	411-089-0075(T)	7-1-2010	Repeal	8-1-2010
411-054-0025	1-1-2010	Amend(T)	2-1-2010	411-089-0140	1-1-2010	Amend(T)	2-1-2010
411-054-0025	3-11-2010	Amend(T)	4-1-2010	411-089-0140	7-1-2010	Amend	8-1-2010
411-054-0025	7-1-2010	Amend	8-1-2010	411-089-0140(T)	7-1-2010	Repeal	8-1-2010
411-054-0025(T)	3-11-2010	Suspend	4-1-2010	411-089-0150	1-1-2010	Suspend	2-1-2010
411-054-0025(T)	7-1-2010	Repeal	8-1-2010	411-089-0150	7-1-2010	Repeal	8-1-2010
411-054-0065	1-1-2010	Amend(T)	2-1-2010	411-300-0110	1-1-2010	Amend(T)	2-1-2010
411-054-0065	7-1-2010	Amend	8-1-2010	411-300-0110	7-1-2010	Amend	8-1-2010
411-054-0065(T)	7-1-2010	Repeal	8-1-2010	411-300-0110(T)	7-1-2010	Repeal	8-1-2010
411-054-0105	1-1-2010	Amend(T)	2-1-2010	411-300-0155	1-1-2010	Amend(T)	2-1-2010
411-054-0105	7-1-2010	Amend	8-1-2010	411-300-0155	3-18-2010	Amend(T)	5-1-2010
411-054-0105(T)	7-1-2010	Repeal	8-1-2010	411-300-0155	7-1-2010	Amend	8-1-2010
411-054-0120	1-1-2010	Amend(T)	2-1-2010	411-300-0155(T)	3-18-2010	Suspend	5-1-2010
411-054-0120	7-1-2010	Amend	8-1-2010	411-300-0155(T)	7-1-2010	Repeal	8-1-2010
411-054-0120(T)	7-1-2010	Repeal	8-1-2010	411-300-0170	1-1-2010	Amend(T)	2-1-2010
411-054-0133	1-1-2010	Adopt(T)	2-1-2010	411-300-0170	3-18-2010	Amend(T)	5-1-2010
411-054-0133	7-1-2010	Adopt	8-1-2010	411-300-0170	7-1-2010	Amend	8-1-2010
411-054-0133(T)	7-1-2010	Repeal	8-1-2010	411-300-0170(T)	3-18-2010	Suspend	5-1-2010
411-070-0000	12-1-2009	Amend	1-1-2010	411-300-0170(T)	7-1-2010	Repeal	8-1-2010
411-070-0005	12-1-2009	Amend	1-1-2010	411-300-0200	1-1-2010	Amend(T)	2-1-2010
411-070-0005(T)	12-1-2009	Repeal	1-1-2010	411-300-0200	3-18-2010	Amend(T)	5-1-2010
411-070-0010	12-1-2009	Amend	1-1-2010	411-300-0200	7-1-2010	Amend	8-1-2010
411-070-0025	12-1-2009	Amend	1-1-2010	411-300-0200(T)	3-18-2010	Suspend	5-1-2010
411-070-0027	12-1-2009	Amend	1-1-2010	411-300-0200(T)	7-1-2010	Repeal	8-1-2010
411-070-0029	12-1-2009	Amend	1-1-2010	411-300-0220	1-1-2010	Amend(T)	2-1-2010
411-070-0033	12-1-2009	Amend	1-1-2010	411-300-0220	7-1-2010	Amend	8-1-2010
411-070-0035	12-1-2009	Amend	1-1-2010	411-300-0220(T)	7-1-2010	Repeal	8-1-2010
411-070-0040	12-1-2009	Amend	1-1-2010	411-305-0005	7-9-2010	Adopt(T)	8-1-2010
411-070-0043	12-1-2009	Amend	1-1-2010	411-305-0010	1-1-2010	Amend(T)	2-1-2010
411-070-0080	12-1-2009	Amend	1-1-2010	411-305-0010	7-1-2010	Amend	8-1-2010
411-070-0110	12-1-2009	Amend	1-1-2010	411-305-0010(T)	7-1-2010	Repeal	8-1-2010
411-070-0125	12-1-2009	Amend	1-1-2010	411-305-0020	1-1-2010	Amend(T)	2-1-2010
411-070-0130	12-1-2009	Amend	1-1-2010	411-305-0020	7-1-2010	Amend	8-1-2010
411-070-0300	12-1-2009	Amend	1-1-2010	411-305-0020(T)	7-1-2010	Repeal	8-1-2010
411-070-0350	12-1-2009	Amend	1-1-2010	411-305-0023	1-1-2010	Amend(T)	2-1-2010
411-070-0359	12-1-2009	Amend	1-1-2010	411-305-0023	7-1-2010	Amend	8-1-2010
411-070-0415	12-1-2009	Amend	1-1-2010	411-305-0023(T)	7-1-2010	Repeal	8-1-2010
411-070-0417	12-1-2009	Amend	1-1-2010	411-305-0050	7-1-2010	Amend	8-1-2010
411-070-0430	12-1-2009	Amend	1-1-2010	411-305-0090	7-1-2010	Amend	8-1-2010
411-070-0442	12-1-2009	Amend	1-1-2010	411-305-0110	1-1-2010	Amend(T)	2-1-2010
411-070-0442(T)	12-1-2009	Repeal	1-1-2010	411-305-0110	7-1-2010	Amend	8-1-2010
411-070-0452	12-1-2009	Amend	1-1-2010	411-305-0110(T)	7-1-2010	Repeal	8-1-2010
411-070-0470	12-1-2009	Amend	1-1-2010	411-305-0115	1-1-2010	Amend(T)	2-1-2010
411-085-0005	1-1-2010	Amend(T)	2-1-2010	411-305-0115	3-18-2010	Amend(T)	5-1-2010

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411-305-0115	7-1-2010	Amend	8-1-2010	411-308-0140	12-28-2009	Adopt	2-1-2010
411-305-0115(T)	3-18-2010	Suspend	5-1-2010	411-308-0140(T)	12-28-2009	Repeal	2-1-2010
411-305-0115(T)	7-1-2010	Repeal	8-1-2010	411-308-0150	12-28-2009	Adopt	2-1-2010
411-305-0140	1-1-2010	Amend(T)	2-1-2010	411-308-0150(T)	12-28-2009	Repeal	2-1-2010
411-305-0140	3-18-2010	Amend(T)	5-1-2010	411-320-0020	1-1-2010	Amend(T)	2-1-2010
411-305-0140	7-1-2010	Amend	8-1-2010	411-320-0020	7-1-2010	Amend	8-1-2010
411-305-0140(T)	3-18-2010	Suspend	5-1-2010	411-320-0020	7-4-2010	Amend(T)	8-1-2010
411-305-0140(T)	7-1-2010	Repeal	8-1-2010	411-320-0020(T)	7-1-2010	Repeal	8-1-2010
411-308-0010	12-28-2009	Adopt	2-1-2010	411-320-0030	1-1-2010	Amend(T)	2-1-2010
411-308-0010(T)	12-28-2009	Repeal	2-1-2010	411-320-0030	3-18-2010	Amend(T)	5-1-2010
411-308-0020	12-28-2009	Adopt	2-1-2010	411-320-0030	7-1-2010	Amend	8-1-2010
411-308-0020	1-1-2010	Amend(T)	2-1-2010	411-320-0030(T)	3-18-2010	Suspend	5-1-2010
411-308-0020	7-1-2010	Amend	8-1-2010	411-320-0030(T)	7-1-2010	Repeal	8-1-2010
411-308-0020(T)	12-28-2009	Repeal	2-1-2010	411-320-0080	7-4-2010	Amend(T)	8-1-2010
411-308-0020(T)	7-1-2010	Repeal	8-1-2010	411-320-0140	1-1-2010	Amend(T)	2-1-2010
411-308-0030	12-28-2009	Adopt	2-1-2010	411-320-0140	7-1-2010	Amend	8-1-2010
411-308-0030	1-1-2010	Amend(T)	2-1-2010	411-320-0140(T)	7-1-2010	Repeal	8-1-2010
411-308-0030	7-1-2010	Amend	8-1-2010	411-320-0175	7-4-2010	Amend(T)	8-1-2010
411-308-0030(T)	12-28-2009	Repeal	2-1-2010	411-325-0020	1-1-2010	Amend(T)	2-1-2010
411-308-0030(T)	7-1-2010	Repeal	8-1-2010	411-325-0020	7-1-2010	Amend	8-1-2010
411-308-0040	12-28-2009	Adopt	2-1-2010	411-325-0020(T)	7-1-2010	Repeal	8-1-2010
411-308-0040(T)	12-28-2009	Repeal	2-1-2010	411-325-0100	1-1-2010	Amend(T)	2-1-2010
411-308-0050	12-28-2009	Adopt	2-1-2010	411-325-0100	7-1-2010	Amend	8-1-2010
411-308-0050(T)	12-28-2009	Repeal	2-1-2010	411-325-0100(T)	7-1-2010	Repeal	8-1-2010
411-308-0060	12-28-2009	Adopt	2-1-2010	411-325-0160	1-1-2010	Amend(T)	2-1-2010
411-308-0060(T)	12-28-2009	Repeal	2-1-2010	411-325-0160	3-18-2010	Amend(T)	5-1-2010
411-308-0070	12-28-2009	Adopt	2-1-2010	411-325-0160	7-1-2010	Amend	8-1-2010
411-308-0070(T)	12-28-2009	Repeal	2-1-2010	411-325-0160(T)	3-18-2010	Suspend	5-1-2010
411-308-0080	12-28-2009	Adopt	2-1-2010	411-325-0160(T)	7-1-2010	Repeal	8-1-2010
411-308-0080(T)	12-28-2009	Repeal	2-1-2010	411-325-0190	1-1-2010	Amend(T)	2-1-2010
411-308-0090	12-28-2009	Adopt	2-1-2010	411-325-0190	7-1-2010	Amend	8-1-2010
411-308-0090	1-1-2010	Amend(T)	2-1-2010	411-325-0190(T)	7-1-2010	Repeal	8-1-2010
411-308-0090	7-1-2010	Amend	8-1-2010	411-328-0560	1-1-2010	Amend(T)	2-1-2010
411-308-0090(T)	12-28-2009	Repeal	2-1-2010	411-328-0560	7-1-2010	Amend	8-1-2010
411-308-0090(T)	7-1-2010	Repeal	8-1-2010	411-328-0560(T)	7-1-2010	Repeal	8-1-2010
411-308-0100	12-28-2009	Adopt	2-1-2010	411-328-0610	1-1-2010	Amend(T)	2-1-2010
411-308-0100	1-1-2010	Amend(T)	2-1-2010	411-328-0610	7-1-2010	Amend	8-1-2010
411-308-0100	7-1-2010	Amend	8-1-2010	411-328-0610(T)	7-1-2010	Repeal	8-1-2010
411-308-0100(T)	12-28-2009	Repeal	2-1-2010	411-328-0670	1-1-2010	Amend(T)	2-1-2010
411-308-0100(T)	7-1-2010	Repeal	8-1-2010	411-328-0670	3-18-2010	Amend(T)	5-1-2010
411-308-0110	12-28-2009	Adopt	2-1-2010	411-328-0670	7-1-2010	Amend	8-1-2010
411-308-0110	1-1-2010	Amend(T)	2-1-2010	411-328-0670(T)	3-18-2010	Suspend	5-1-2010
411-308-0110	3-18-2010	Amend(T)	5-1-2010	411-328-0670(T)	7-1-2010	Repeal	8-1-2010
411-308-0110	7-1-2010	Amend	8-1-2010	411-330-0010	1-1-2010	Amend(T)	2-1-2010
411-308-0110(T)	12-28-2009	Repeal	2-1-2010	411-330-0010	7-1-2010	Amend	8-1-2010
411-308-0110(T)	3-18-2010	Suspend	5-1-2010	411-330-0010(T)	7-1-2010	Repeal	8-1-2010
411-308-0110(T)	7-1-2010	Repeal	8-1-2010	411-330-0020	1-1-2010	Amend(T)	2-1-2010
411-308-0120	12-28-2009	Adopt	2-1-2010	411-330-0020	7-1-2010	Amend	8-1-2010
411-308-0120(T)	12-28-2009	Repeal	2-1-2010	411-330-0020(T)	7-1-2010	Repeal	8-1-2010
411-308-0130	12-28-2009	Adopt	2-1-2010	411-330-0060	1-1-2010	Amend(T)	2-1-2010
411-308-0130	1-1-2010	Amend(T)	2-1-2010	411-330-0060	3-18-2010	Amend(T)	5-1-2010
411-308-0130	3-18-2010	Amend(T)	5-1-2010	411-330-0060	7-1-2010	Amend	8-1-2010
411-308-0130	7-1-2010	Amend	8-1-2010	411-330-0060(T)	3-18-2010	Suspend	5-1-2010
411-308-0130(T)	12-28-2009	Repeal	2-1-2010	411-330-0060(T)	7-1-2010	Repeal	8-1-2010
411-308-0130(T)	3-18-2010	Suspend	5-1-2010	411-330-0070	1-1-2010	Amend(T)	2-1-2010
411-308-0130(T)	7-1-2010	Repeal	8-1-2010	411-330-0070	3-18-2010	Amend(T)	5-1-2010

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411-330-0070	7-1-2010	Amend	8-1-2010	411-340-0160	7-1-2010	Amend	8-1-2010
411-330-0070(T)	3-18-2010	Suspend	5-1-2010	411-340-0160(T)	3-18-2010	Suspend	5-1-2010
411-330-0070(T)	7-1-2010	Repeal	8-1-2010	411-340-0160(T)	7-1-2010	Repeal	8-1-2010
411-330-0100	1-1-2010	Amend(T)	2-1-2010	411-345-0020	1-1-2010	Amend(T)	2-1-2010
411-330-0100	7-1-2010	Amend	8-1-2010	411-345-0020	7-1-2010	Amend	8-1-2010
411-330-0100(T)	7-1-2010	Repeal	8-1-2010	411-345-0020(T)	7-1-2010	Repeal	8-1-2010
411-330-0120	1-1-2010	Amend(T)	2-1-2010	411-345-0080	1-1-2010	Amend(T)	2-1-2010
411-330-0120	7-1-2010	Amend	8-1-2010	411-345-0080	7-1-2010	Amend	8-1-2010
411-330-0120(T)	7-1-2010	Repeal	8-1-2010	411-345-0080(T)	7-1-2010	Repeal	8-1-2010
411-330-0140	1-1-2010	Amend(T)	2-1-2010	411-345-0100	1-1-2010	Amend(T)	2-1-2010
411-330-0140	7-1-2010	Amend	8-1-2010	411-345-0100	7-1-2010	Amend	8-1-2010
411-330-0140(T)	7-1-2010	Repeal	8-1-2010	411-345-0100(T)	7-1-2010	Repeal	8-1-2010
411-330-0160	1-1-2010	Amend(T)	2-1-2010	411-345-0210	1-1-2010	Amend(T)	2-1-2010
411-330-0160	7-1-2010	Amend	8-1-2010	411-345-0210	3-18-2010	Amend(T)	5-1-2010
411-330-0160(T)	7-1-2010	Repeal	8-1-2010	411-345-0210	7-1-2010	Amend	8-1-2010
411-335-0020	1-1-2010	Amend(T)	2-1-2010	411-345-0210(T)	3-18-2010	Suspend	5-1-2010
411-335-0020	7-1-2010	Amend	8-1-2010	411-345-0210(T)	7-1-2010	Repeal	8-1-2010
411-335-0020(T)	7-1-2010	Repeal	8-1-2010	411-345-0230	1-1-2010	Amend(T)	2-1-2010
411-335-0030	1-1-2010	Amend(T)	2-1-2010	411-345-0230	7-1-2010	Amend	8-1-2010
411-335-0030	3-18-2010	Amend(T)	5-1-2010	411-345-0230(T)	7-1-2010	Repeal	8-1-2010
411-335-0030	7-1-2010	Amend	8-1-2010	411-345-0290	1-1-2010	Amend(T)	2-1-2010
411-335-0030(T)	3-18-2010	Suspend	5-1-2010	411-345-0290	7-1-2010	Amend	8-1-2010
411-335-0030(T)	7-1-2010	Repeal	8-1-2010	411-345-0290(T)	7-1-2010	Repeal	8-1-2010
411-335-0100	1-1-2010	Amend(T)	2-1-2010	411-346-0100	7-1-2010	Amend	8-1-2010
411-335-0100	7-1-2010	Amend	8-1-2010	411-346-0110	1-1-2010	Amend(T)	2-1-2010
411-335-0100(T)	7-1-2010	Repeal	8-1-2010	411-346-0110	7-1-2010	Amend	8-1-2010
411-340-0020	1-1-2010	Amend(T)	2-1-2010	411-346-0110(T)	7-1-2010	Repeal	8-1-2010
411-340-0020	7-1-2010	Amend	8-1-2010	411-346-0120	7-1-2010	Amend	8-1-2010
411-340-0020(T)	7-1-2010	Repeal	8-1-2010	411-346-0130	7-1-2010	Amend	8-1-2010
411-340-0030	1-1-2010	Amend(T)	2-1-2010	411-346-0140	7-1-2010	Amend	8-1-2010
411-340-0030	7-1-2010	Amend	8-1-2010	411-346-0150	1-1-2010	Amend(T)	2-1-2010
411-340-0030(T)	7-1-2010	Repeal	8-1-2010	411-346-0150	3-18-2010	Amend(T)	5-1-2010
411-340-0040	1-1-2010	Amend(T)	2-1-2010	411-346-0150	7-1-2010	Amend	8-1-2010
411-340-0040	7-1-2010	Amend	8-1-2010	411-346-0150(T)	3-18-2010	Suspend	5-1-2010
411-340-0040(T)	7-1-2010	Repeal	8-1-2010	411-346-0150(T)	7-1-2010	Repeal	8-1-2010
411-340-0050	1-1-2010	Amend(T)	2-1-2010	411-346-0160	7-1-2010	Amend	8-1-2010
411-340-0050	7-1-2010	Amend	8-1-2010	411-346-0165	7-1-2010	Amend	8-1-2010
411-340-0050(T)	7-1-2010	Repeal	8-1-2010	411-346-0170	7-1-2010	Amend	8-1-2010
411-340-0070	1-1-2010	Amend(T)	2-1-2010	411-346-0180	1-1-2010	Amend(T)	2-1-2010
411-340-0070	3-18-2010	Amend(T)	5-1-2010	411-346-0180	7-1-2010	Amend	8-1-2010
411-340-0070	7-1-2010	Amend	8-1-2010	411-346-0180(T)	7-1-2010	Repeal	8-1-2010
411-340-0070(T)	3-18-2010	Suspend	5-1-2010	411-346-0190	7-1-2010	Amend	8-1-2010
411-340-0070(T)	7-1-2010	Repeal	8-1-2010	411-346-0200	7-1-2010	Amend	8-1-2010
411-340-0080	1-1-2010	Amend(T)	2-1-2010	411-346-0210	7-1-2010	Amend	8-1-2010
411-340-0080	7-1-2010	Amend	8-1-2010	411-346-0220	1-1-2010	Amend(T)	2-1-2010
411-340-0080(T)	7-1-2010	Repeal	8-1-2010	411-346-0220	3-18-2010	Amend(T)	5-1-2010
411-340-0130	1-1-2010	Amend(T)	2-1-2010	411-346-0220	7-1-2010	Amend	8-1-2010
411-340-0130	7-1-2010	Amend	8-1-2010	411-346-0220(T)	3-18-2010	Suspend	5-1-2010
411-340-0130(T)	7-1-2010	Repeal	8-1-2010	411-346-0220(T)	7-1-2010	Repeal	8-1-2010
411-340-0140	1-1-2010	Amend(T)	2-1-2010	411-346-0230	7-1-2010	Amend	8-1-2010
411-340-0140	3-18-2010	Amend(T)	5-1-2010	411-350-0020	1-1-2010	Amend(T)	2-1-2010
411-340-0140	7-1-2010	Amend	8-1-2010	411-350-0020	7-1-2010	Amend	8-1-2010
411-340-0140(T)	3-18-2010	Suspend	5-1-2010	411-350-0020(T)	7-1-2010	Repeal	8-1-2010
411-340-0140(T)	7-1-2010	Repeal	8-1-2010	411-350-0050	1-1-2010	Amend(T)	2-1-2010
411-340-0160	1-1-2010	Amend(T)	2-1-2010	411-350-0050	7-1-2010	Amend	8-1-2010
411-340-0160	3-18-2010	Amend(T)	5-1-2010	411-350-0050(T)	7-1-2010	Repeal	8-1-2010

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411-350-0080	1-1-2010	Amend(T)	2-1-2010	411-360-0100	7-1-2010	Amend	8-1-2010
411-350-0080	3-18-2010	Amend(T)	5-1-2010	411-360-0110	1-1-2010	Amend(T)	2-1-2010
411-350-0080	7-1-2010	Amend	8-1-2010	411-360-0110	3-18-2010	Amend(T)	5-1-2010
411-350-0080(T)	3-18-2010	Suspend	5-1-2010	411-360-0110	7-1-2010	Amend	8-1-2010
411-350-0080(T)	7-1-2010	Repeal	8-1-2010	411-360-0110(T)	3-18-2010	Suspend	5-1-2010
411-350-0110	1-1-2010	Amend(T)	2-1-2010	411-360-0110(T)	7-1-2010	Repeal	8-1-2010
411-350-0110	3-18-2010	Amend(T)	5-1-2010	411-360-0120	7-1-2010	Amend	8-1-2010
411-350-0110	7-1-2010	Amend	8-1-2010	411-360-0130	7-1-2010	Amend	8-1-2010
411-350-0110(T)	3-18-2010	Suspend	5-1-2010	411-360-0140	7-1-2010	Amend	8-1-2010
411-350-0110(T)	7-1-2010	Repeal	8-1-2010	411-360-0150	7-1-2010	Amend	8-1-2010
411-350-0120	1-1-2010	Amend(T)	2-1-2010	411-360-0160	7-1-2010	Amend	8-1-2010
411-350-0120	7-1-2010	Amend	8-1-2010	411-360-0170	7-1-2010	Amend	8-1-2010
411-350-0120(T)	7-1-2010	Repeal	8-1-2010	411-360-0180	7-1-2010	Amend	8-1-2010
411-355-0010	1-1-2010	Amend(T)	2-1-2010	411-360-0190	7-1-2010	Amend	8-1-2010
411-355-0010	7-1-2010	Amend	8-1-2010	411-360-0200	7-1-2010	Amend	8-1-2010
411-355-0010(T)	7-1-2010	Repeal	8-1-2010	411-360-0210	1-1-2010	Amend(T)	2-1-2010
411-355-0040	1-1-2010	Amend(T)	2-1-2010	411-360-0210	7-1-2010	Amend	8-1-2010
411-355-0040	7-1-2010	Amend	8-1-2010	411-360-0210(T)	7-1-2010	Repeal	8-1-2010
411-355-0040(T)	7-1-2010	Repeal	8-1-2010	411-360-0220	7-1-2010	Amend	8-1-2010
411-355-0050	1-1-2010	Amend(T)	2-1-2010	411-360-0230	7-1-2010	Amend	8-1-2010
411-355-0050	3-18-2010	Amend(T)	5-1-2010	411-360-0240	7-1-2010	Amend	8-1-2010
411-355-0050	7-1-2010	Amend	8-1-2010	411-360-0250	7-1-2010	Amend	8-1-2010
411-355-0050(T)	3-18-2010	Suspend	5-1-2010	411-360-0260	7-1-2010	Amend	8-1-2010
411-355-0050(T)	7-1-2010	Repeal	8-1-2010	411-360-0270	1-1-2010	Amend(T)	2-1-2010
411-355-0060	1-1-2010	Amend(T)	2-1-2010	411-360-0270	3-18-2010	Amend(T)	5-1-2010
411-355-0060	7-1-2010	Amend	8-1-2010	411-360-0270	7-1-2010	Amend	8-1-2010
411-355-0060(T)	7-1-2010	Repeal	8-1-2010	411-360-0270(T)	3-18-2010	Suspend	5-1-2010
411-355-0090	1-1-2010	Amend(T)	2-1-2010	411-360-0270(T)	7-1-2010	Repeal	8-1-2010
411-355-0090	3-18-2010	Amend(T)	5-1-2010	411-360-0275	7-1-2010	Amend	8-1-2010
411-355-0090	7-1-2010	Amend	8-1-2010	411-360-0280	7-1-2010	Amend	8-1-2010
411-355-0090(T)	3-18-2010	Suspend	5-1-2010	411-360-0290	7-1-2010	Amend	8-1-2010
411-355-0090(T)	7-1-2010	Repeal	8-1-2010	411-360-0300	7-1-2010	Amend	8-1-2010
411-355-0120	1-1-2010	Amend(T)	2-1-2010	411-360-0310	7-1-2010	Amend	8-1-2010
411-355-0120	7-1-2010	Amend	8-1-2010	411-540-0005(T)	7-1-2010	Repeal	8-1-2010
411-355-0120(T)	7-1-2010	Repeal	8-1-2010	413-010-0081	7-1-2010	Amend(T)	8-1-2010
411-360-0010	7-1-2010	Amend	8-1-2010	413-010-0082	7-1-2010	Amend(T)	8-1-2010
411-360-0020	1-1-2010	Amend(T)	2-1-2010	413-010-0083	7-1-2010	Amend(T)	8-1-2010
411-360-0020	7-1-2010	Amend	8-1-2010	413-010-0084	7-1-2010	Suspend	8-1-2010
411-360-0020(T)	7-1-2010	Repeal	8-1-2010	413-010-0085	7-1-2010	Amend(T)	8-1-2010
411-360-0030	7-1-2010	Amend	8-1-2010	413-010-0086	7-1-2010	Amend(T)	8-1-2010
411-360-0040	1-1-2010	Amend(T)	2-1-2010	413-010-0300	7-1-2010	Amend	8-1-2010
411-360-0040	3-18-2010	Amend(T)	5-1-2010	413-010-0310	7-1-2010	Amend	8-1-2010
411-360-0040	7-1-2010	Amend	8-1-2010	413-010-0320	7-1-2010	Amend	8-1-2010
411-360-0040(T)	3-18-2010	Suspend	5-1-2010	413-010-0330	7-1-2010	Amend	8-1-2010
411-360-0040(T)	7-1-2010	Repeal	8-1-2010	413-010-0340	7-1-2010	Amend	8-1-2010
411-360-0050	1-1-2010	Amend(T)	2-1-2010	413-010-0500	12-29-2009	Amend	2-1-2010
411-360-0050	7-1-2010	Amend	8-1-2010	413-010-0505	12-29-2009	Adopt	2-1-2010
411-360-0050(T)	7-1-2010	Repeal	8-1-2010	413-010-0510	12-29-2009	Adopt	2-1-2010
411-360-0060	7-1-2010	Amend	8-1-2010	413-010-0515	12-29-2009	Adopt	2-1-2010
411-360-0070	7-1-2010	Amend	8-1-2010	413-010-0520	12-29-2009	Adopt	2-1-2010
411-360-0080	7-1-2010	Amend	8-1-2010	413-010-0525	12-29-2009	Adopt	2-1-2010
411-360-0090	1-1-2010	Amend(T)	2-1-2010	413-010-0530	12-29-2009	Adopt	2-1-2010
411-360-0090	3-18-2010	Amend(T)	5-1-2010	413-010-0535	12-29-2009	Adopt	2-1-2010
411-360-0090	7-1-2010	Amend	8-1-2010	413-015-0115	6-15-2010	Amend(T)	7-1-2010
411-360-0090(T)	3-18-2010	Suspend	5-1-2010	413-015-0415	1-1-2010	Amend(T)	2-1-2010
411-360-0090(T)	7-1-2010	Repeal	8-1-2010	413-015-0415	4-2-2010	Amend	5-1-2010

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413-015-0415(T)	4-2-2010	Repeal	5-1-2010	413-070-0540	7-1-2010	Amend(T)	8-1-2010
413-015-0420	2-12-2010	Amend(T)	3-1-2010	413-070-0550	7-1-2010	Amend(T)	8-1-2010
413-015-0420	4-2-2010	Amend	5-1-2010	413-070-0600	12-29-2009	Amend	2-1-2010
413-015-0420(T)	4-2-2010	Repeal	5-1-2010	413-070-0620	12-29-2009	Amend	2-1-2010
413-015-1105	6-15-2010	Amend(T)	7-1-2010	413-070-0625	12-29-2009	Amend	2-1-2010
413-015-1110	6-15-2010	Amend(T)	7-1-2010	413-070-0630	12-29-2009	Amend	2-1-2010
413-015-1120	6-15-2010	Amend(T)	7-1-2010	413-070-0640	12-29-2009	Amend	2-1-2010
413-015-1200	7-1-2010	Adopt	8-1-2010	413-070-0645	12-29-2009	Amend	2-1-2010
413-015-1210	7-1-2010	Adopt	8-1-2010	413-070-0900	12-16-2009	Amend(T)	2-1-2010
413-015-1220	7-1-2010	Adopt	8-1-2010	413-070-0900	6-15-2010	Amend	7-1-2010
413-015-1230	7-1-2010	Adopt	8-1-2010	413-070-0905	12-16-2009	Amend(T)	2-1-2010
413-020-0200	12-29-2009	Amend	2-1-2010	413-070-0905	2-1-2010	Amend(T)	3-1-2010
413-020-0210	12-29-2009	Amend	2-1-2010	413-070-0905	6-15-2010	Amend	7-1-2010
413-020-0230	12-29-2009	Amend	2-1-2010	413-070-0905(T)	2-1-2010	Suspend	3-1-2010
413-020-0233	12-29-2009	Amend	2-1-2010	413-070-0909	12-16-2009	Amend(T)	2-1-2010
413-020-0236	12-29-2009	Amend	2-1-2010	413-070-0909	6-15-2010	Amend	7-1-2010
413-020-0240	12-29-2009	Amend	2-1-2010	413-070-0915	12-16-2009	Amend(T)	2-1-2010
413-020-0245	12-29-2009	Amend	2-1-2010	413-070-0915	6-15-2010	Repeal	7-1-2010
413-020-0255	12-29-2009	Amend	2-1-2010	413-070-0917	12-16-2009	Amend(T)	2-1-2010
413-040-0000	12-29-2009	Amend	2-1-2010	413-070-0917	6-15-2010	Amend	7-1-2010
413-040-0005	12-29-2009	Amend	2-1-2010	413-070-0919	12-16-2009	Adopt(T)	2-1-2010
413-040-0006	12-29-2009	Amend	2-1-2010	413-070-0919	6-15-2010	Adopt	7-1-2010
413-040-0008	12-29-2009	Amend	2-1-2010	413-070-0920	12-16-2009	Am. & Ren.(T)	2-1-2010
413-040-0009	12-29-2009	Amend	2-1-2010	413-070-0920	6-15-2010	Am. & Ren.	7-1-2010
413-040-0010	12-29-2009	Amend	2-1-2010	413-070-0925	12-16-2009	Amend(T)	2-1-2010
413-040-0011	12-29-2009	Amend	2-1-2010	413-070-0925	2-1-2010	Amend(T)	3-1-2010
413-040-0013	12-29-2009	Amend	2-1-2010	413-070-0925	6-15-2010	Amend	7-1-2010
413-040-0016	12-29-2009	Amend	2-1-2010	413-070-0925(T)	2-1-2010	Suspend	3-1-2010
413-040-0017	12-29-2009	Amend	2-1-2010	413-070-0930	12-16-2009	Am. & Ren.(T)	2-1-2010
413-040-0024	12-29-2009	Amend	2-1-2010	413-070-0930	6-15-2010	Am. & Ren.	7-1-2010
413-040-0032	12-29-2009	Amend	2-1-2010	413-070-0935	12-16-2009	Am. & Ren.(T)	2-1-2010
413-040-0240	3-15-2010	Amend(T)	4-1-2010	413-070-0935	6-15-2010	Am. & Ren.	7-1-2010
413-070-0060	7-1-2010	Amend	8-1-2010	413-070-0937	12-16-2009	Am. & Ren.(T)	2-1-2010
413-070-0063	7-1-2010	Amend	8-1-2010	413-070-0937	6-15-2010	Am. & Ren.	7-1-2010
413-070-0066	7-1-2010	Amend	8-1-2010	413-070-0939	2-1-2010	Amend(T)	3-1-2010
413-070-0067	7-1-2010	Suspend	8-1-2010	413-070-0939(T)	2-1-2010	Suspend	3-1-2010
413-070-0069	7-1-2010	Amend	8-1-2010	413-070-0940	12-16-2009	Am. & Ren.(T)	2-1-2010
413-070-0072	7-1-2010	Amend	8-1-2010	413-070-0940	6-15-2010	Am. & Ren.	7-1-2010
413-070-0075	7-1-2010	Amend	8-1-2010	413-070-0945	12-16-2009	Am. & Ren.(T)	2-1-2010
413-070-0078	7-1-2010	Amend	8-1-2010	413-070-0945	6-15-2010	Am. & Ren.	7-1-2010
413-070-0081	7-1-2010	Amend	8-1-2010	413-070-0949	2-1-2010	Amend(T)	3-1-2010
413-070-0087	7-1-2010	Amend	8-1-2010	413-070-0949(T)	2-1-2010	Suspend	3-1-2010
413-070-0090	7-1-2010	Repeal	8-1-2010	413-070-0955	12-16-2009	Am. & Ren.(T)	2-1-2010
413-070-0092	7-1-2010	Repeal	8-1-2010	413-070-0955	6-15-2010	Am. & Ren.	7-1-2010
413-070-0093	7-1-2010	Repeal	8-1-2010	413-070-0960	12-16-2009	Am. & Ren.(T)	2-1-2010
413-070-0400	6-30-2010	Amend	8-1-2010	413-070-0960	6-15-2010	Am. & Ren.	7-1-2010
413-070-0410	6-30-2010	Amend	8-1-2010	413-070-0964	2-1-2010	Amend(T)	3-1-2010
413-070-0430	6-30-2010	Amend	8-1-2010	413-070-0964(T)	2-1-2010	Suspend	3-1-2010
413-070-0440	6-30-2010	Repeal	8-1-2010	413-070-0965	12-16-2009	Am. & Ren.(T)	2-1-2010
413-070-0450	6-30-2010	Amend	8-1-2010	413-070-0965	6-15-2010	Am. & Ren.	7-1-2010
413-070-0470	6-30-2010	Amend	8-1-2010	413-070-0969	12-16-2009	Adopt(T)	2-1-2010
413-070-0480	6-30-2010	Amend	8-1-2010	413-070-0969	6-15-2010	Adopt	7-1-2010
413-070-0490	6-30-2010	Amend	8-1-2010	413-070-0970	12-16-2009	Amend(T)	2-1-2010
413-070-0520	7-1-2010	Amend(T)	8-1-2010	413-070-0970	6-15-2010	Amend	7-1-2010
413-070-0524	7-1-2010	Amend(T)	8-1-2010	413-070-0974	2-1-2010	Amend(T)	3-1-2010
413-070-0536	7-1-2010	Amend(T)	8-1-2010	413-070-0974(T)	2-1-2010	Suspend	3-1-2010

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413-080-0000	12-29-2009	Repeal	2-1-2010	413-100-0320	6-15-2010	Amend	7-1-2010
413-080-0010	12-29-2009	Repeal	2-1-2010	413-100-0335	12-16-2009	Adopt(T)	2-1-2010
413-080-0020	12-29-2009	Repeal	2-1-2010	413-100-0335	6-15-2010	Adopt	7-1-2010
413-080-0030	12-29-2009	Repeal	2-1-2010	413-100-0345	12-16-2009	Adopt(T)	2-1-2010
413-080-0040	12-29-2009	Amend	2-1-2010	413-100-0345	6-15-2010	Adopt	7-1-2010
413-080-0050	12-29-2009	Amend	2-1-2010	413-110-0100	7-1-2010	Amend(T)	8-1-2010
413-080-0052	12-29-2009	Amend	2-1-2010	413-110-0110	7-1-2010	Amend(T)	8-1-2010
413-080-0055	12-29-2009	Amend	2-1-2010	413-110-0120	7-1-2010	Suspend	8-1-2010
413-080-0059	12-29-2009	Amend	2-1-2010	413-110-0130	7-1-2010	Amend(T)	8-1-2010
413-080-0063	12-29-2009	Amend	2-1-2010	413-110-0132	7-1-2010	Adopt(T)	8-1-2010
413-080-0067	12-29-2009	Amend	2-1-2010	413-110-0140	7-1-2010	Amend(T)	8-1-2010
413-090-0000	12-29-2009	Amend	2-1-2010	413-110-0150	7-1-2010	Adopt(T)	8-1-2010
413-090-0005	12-29-2009	Amend	2-1-2010	413-120-0000	7-1-2010	Amend(T)	8-1-2010
413-090-0010	12-29-2009	Amend	2-1-2010	413-120-0010	7-1-2010	Amend(T)	8-1-2010
413-090-0021	12-29-2009	Adopt	2-1-2010	413-120-0015	7-1-2010	Suspend	8-1-2010
413-090-0030	12-29-2009	Amend	2-1-2010	413-120-0020	7-1-2010	Amend(T)	8-1-2010
413-090-0040	12-29-2009	Amend	2-1-2010	413-120-0030	7-1-2010	Suspend	8-1-2010
413-090-0050	12-29-2009	Amend	2-1-2010	413-120-0033	7-1-2010	Amend(T)	8-1-2010
413-090-0100	12-29-2009	Amend	2-1-2010	413-120-0035	7-1-2010	Amend(T)	8-1-2010
413-090-0110	12-29-2009	Amend	2-1-2010	413-120-0040	7-1-2010	Amend(T)	8-1-2010
413-090-0120	12-29-2009	Amend	2-1-2010	413-120-0045	7-1-2010	Am. & Ren.(T)	8-1-2010
413-090-0130	12-29-2009	Amend	2-1-2010	413-120-0050	7-1-2010	Adopt(T)	8-1-2010
413-090-0133	12-29-2009	Adopt	2-1-2010	413-120-0053	7-1-2010	Adopt(T)	8-1-2010
413-090-0135	12-29-2009	Adopt	2-1-2010	413-120-0057	7-1-2010	Adopt(T)	8-1-2010
413-090-0136	12-29-2009	Adopt	2-1-2010	413-120-0060	7-1-2010	Amend(T)	8-1-2010
413-090-0140	12-29-2009	Amend	2-1-2010	413-120-0075	7-1-2010	Am. & Ren.(T)	8-1-2010
413-090-0150	12-29-2009	Amend	2-1-2010	413-120-0080	7-1-2010	Suspend	8-1-2010
413-090-0160	12-29-2009	Repeal	2-1-2010	413-120-0190	7-1-2010	Amend(T)	8-1-2010
413-090-0170	12-29-2009	Repeal	2-1-2010	413-120-0195	7-1-2010	Amend(T)	8-1-2010
413-090-0180	12-29-2009	Repeal	2-1-2010	413-120-0200	7-1-2010	Suspend	8-1-2010
413-090-0190	12-29-2009	Repeal	2-1-2010	413-120-0210	7-1-2010	Suspend	8-1-2010
413-090-0200	12-29-2009	Repeal	2-1-2010	413-120-0220	7-1-2010	Amend(T)	8-1-2010
413-090-0210	12-29-2009	Amend	2-1-2010	413-120-0225	7-1-2010	Adopt(T)	8-1-2010
413-100-0000	6-15-2010	Amend	7-1-2010	413-120-0230	7-1-2010	Suspend	8-1-2010
413-100-0010	6-15-2010	Amend	7-1-2010	413-120-0240	7-1-2010	Amend(T)	8-1-2010
413-100-0020	12-16-2009	Amend(T)	2-1-2010	413-120-0243	7-1-2010	Adopt(T)	8-1-2010
413-100-0020	6-15-2010	Amend	7-1-2010	413-120-0246	7-1-2010	Adopt(T)	8-1-2010
413-100-0030	6-15-2010	Amend	7-1-2010	413-120-0250	7-1-2010	Suspend	8-1-2010
413-100-0060	6-15-2010	Amend	7-1-2010	413-120-0255	7-1-2010	Suspend	8-1-2010
413-100-0070	6-15-2010	Amend	7-1-2010	413-120-0260	7-1-2010	Suspend	8-1-2010
413-100-0080	6-15-2010	Amend	7-1-2010	413-120-0265	7-1-2010	Suspend	8-1-2010
413-100-0090	6-15-2010	Amend	7-1-2010	413-120-0270	7-1-2010	Suspend	8-1-2010
413-100-0110	6-15-2010	Amend	7-1-2010	413-120-0275	7-1-2010	Suspend	8-1-2010
413-100-0120	6-15-2010	Amend	7-1-2010	413-120-0280	7-1-2010	Suspend	8-1-2010
413-100-0130	6-15-2010	Amend	7-1-2010	413-120-0285	7-1-2010	Suspend	8-1-2010
413-100-0135	6-15-2010	Amend	7-1-2010	413-120-0290	7-1-2010	Suspend	8-1-2010
413-100-0150	6-15-2010	Amend	7-1-2010	413-120-0300	7-1-2010	Suspend	8-1-2010
413-100-0160	6-15-2010	Amend	7-1-2010	413-120-0310	7-1-2010	Suspend	8-1-2010
413-100-0170	6-15-2010	Amend	7-1-2010	413-120-0500	7-1-2010	Amend(T)	8-1-2010
413-100-0180	6-15-2010	Amend	7-1-2010	413-120-0510	7-1-2010	Amend(T)	8-1-2010
413-100-0190	6-15-2010	Amend	7-1-2010	413-120-0520	7-1-2010	Suspend	8-1-2010
413-100-0210	6-15-2010	Amend	7-1-2010	413-120-0521	7-1-2010	Adopt(T)	8-1-2010
413-100-0230	6-15-2010	Amend	7-1-2010	413-120-0530	7-1-2010	Suspend	8-1-2010
413-100-0240	6-15-2010	Amend	7-1-2010	413-120-0540	7-1-2010	Suspend	8-1-2010
413-100-0250	6-15-2010	Amend	7-1-2010	413-120-0541	7-1-2010	Adopt(T)	8-1-2010

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413-120-0551	7-1-2010	Adopt(T)	8-1-2010	413-200-0210	7-1-2010	Repeal	8-1-2010
413-120-0560	7-1-2010	Adopt(T)	8-1-2010	413-200-0220	7-1-2010	Repeal	8-1-2010
413-120-0570	7-1-2010	Adopt(T)	8-1-2010	414-061-0000	1-1-2010	Amend(T)	2-1-2010
413-120-0590	7-1-2010	Adopt(T)	8-1-2010	414-061-0000	7-1-2010	Amend	8-1-2010
413-120-0595	7-1-2010	Adopt(T)	8-1-2010	414-061-0010	1-1-2010	Amend(T)	2-1-2010
413-120-0700	7-1-2010	Adopt(T)	8-1-2010	414-061-0010	7-1-2010	Amend	8-1-2010
413-120-0710	7-1-2010	Adopt(T)	8-1-2010	414-061-0020	1-1-2010	Amend(T)	2-1-2010
413-120-0720	7-1-2010	Adopt(T)	8-1-2010	414-061-0020	7-1-2010	Amend	8-1-2010
413-120-0730	7-1-2010	Adopt(T)	8-1-2010	414-061-0030	1-1-2010	Amend(T)	2-1-2010
413-120-0740	7-1-2010	Adopt(T)	8-1-2010	414-061-0030	7-1-2010	Amend	8-1-2010
413-120-0745	7-1-2010	Adopt(T)	8-1-2010	414-061-0040	1-1-2010	Amend(T)	2-1-2010
413-120-0750	7-1-2010	Adopt(T)	8-1-2010	414-061-0040	7-1-2010	Amend	8-1-2010
413-120-0760	7-1-2010	Adopt(T)	8-1-2010	414-061-0050	1-1-2010	Amend(T)	2-1-2010
413-120-0800	7-1-2010	Amend(T)	8-1-2010	414-061-0050	7-1-2010	Amend	8-1-2010
413-120-0810	7-1-2010	Amend(T)	8-1-2010	414-061-0060	1-1-2010	Amend(T)	2-1-2010
413-120-0820	7-1-2010	Suspend	8-1-2010	414-061-0060	7-1-2010	Amend	8-1-2010
413-120-0830	7-1-2010	Amend(T)	8-1-2010	414-061-0065	7-1-2010	Adopt	8-1-2010
413-120-0840	7-1-2010	Adopt(T)	8-1-2010	414-061-0070	1-1-2010	Amend(T)	2-1-2010
413-120-0850	7-1-2010	Adopt(T)	8-1-2010	414-061-0070	7-1-2010	Amend	8-1-2010
413-120-0860	7-1-2010	Adopt(T)	8-1-2010	414-061-0080	1-1-2010	Amend(T)	2-1-2010
413-120-0870	7-1-2010	Adopt(T)	8-1-2010	414-061-0080	7-1-2010	Amend	8-1-2010
413-120-0900	6-30-2010	Adopt(T)	8-1-2010	414-061-0090	1-1-2010	Amend(T)	2-1-2010
413-120-0905	6-30-2010	Adopt(T)	8-1-2010	414-061-0090	7-1-2010	Amend	8-1-2010
413-120-0910	6-30-2010	Adopt(T)	8-1-2010	414-061-0100	1-1-2010	Amend(T)	2-1-2010
413-120-0920	6-30-2010	Adopt(T)	8-1-2010	414-061-0100	7-1-2010	Amend	8-1-2010
413-120-0925	6-30-2010	Adopt(T)	8-1-2010	414-061-0110	1-1-2010	Amend(T)	2-1-2010
413-120-0930	6-30-2010	Adopt(T)	8-1-2010	414-061-0110	7-1-2010	Amend	8-1-2010
413-120-0940	6-30-2010	Adopt(T)	8-1-2010	414-061-0120	1-1-2010	Amend(T)	2-1-2010
413-120-0945	6-30-2010	Adopt(T)	8-1-2010	414-061-0120	7-1-2010	Amend	8-1-2010
413-120-0950	6-30-2010	Adopt(T)	8-1-2010	414-205-0000	1-1-2010	Amend(T)	2-1-2010
413-120-0960	6-30-2010	Adopt(T)	8-1-2010	414-205-0000	7-1-2010	Amend	8-1-2010
413-120-0970	6-30-2010	Adopt(T)	8-1-2010	414-205-0010	1-1-2010	Amend(T)	2-1-2010
413-120-0980	6-30-2010	Adopt(T)	8-1-2010	414-205-0010	7-1-2010	Amend	8-1-2010
413-130-0000	12-29-2009	Amend	2-1-2010	414-205-0020	1-1-2010	Amend(T)	2-1-2010
413-130-0010	12-29-2009	Amend	2-1-2010	414-205-0020	7-1-2010	Amend	8-1-2010
413-130-0020	12-29-2009	Amend	2-1-2010	414-205-0035	1-1-2010	Amend(T)	2-1-2010
413-130-0030	12-29-2009	Amend	2-1-2010	414-205-0040	1-1-2010	Amend(T)	2-1-2010
413-130-0040	12-29-2009	Amend	2-1-2010	414-205-0040	7-1-2010	Amend	8-1-2010
413-130-0045	12-29-2009	Adopt	2-1-2010	414-205-0055	1-1-2010	Amend(T)	2-1-2010
413-130-0050	12-29-2009	Amend	2-1-2010	414-205-0065	1-1-2010	Amend(T)	2-1-2010
413-130-0060	12-29-2009	Amend	2-1-2010	414-205-0065	7-1-2010	Amend	8-1-2010
413-130-0070	12-29-2009	Amend	2-1-2010	414-205-0075	1-1-2010	Amend(T)	2-1-2010
413-130-0075	12-29-2009	Amend	2-1-2010	414-205-0075	7-1-2010	Amend	8-1-2010
413-130-0080	12-29-2009	Amend	2-1-2010	414-205-0085	1-1-2010	Amend(T)	2-1-2010
413-130-0090	12-29-2009	Amend	2-1-2010	414-205-0090	1-1-2010	Amend(T)	2-1-2010
413-130-0100	12-29-2009	Amend	2-1-2010	414-205-0100	1-1-2010	Amend(T)	2-1-2010
413-130-0110	12-29-2009	Amend	2-1-2010	414-205-0110	1-1-2010	Amend(T)	2-1-2010
413-130-0115	12-29-2009	Amend	2-1-2010	414-205-0120	1-1-2010	Amend(T)	2-1-2010
413-130-0120	12-29-2009	Repeal	2-1-2010	414-205-0130	1-1-2010	Amend(T)	2-1-2010
413-130-0125	12-29-2009	Amend	2-1-2010	414-205-0140	1-1-2010	Amend(T)	2-1-2010
413-130-0127	12-29-2009	Repeal	2-1-2010	414-205-0150	1-1-2010	Amend(T)	2-1-2010
413-130-0130	12-29-2009	Amend	2-1-2010	414-205-0160	1-1-2010	Amend(T)	2-1-2010
413-130-0150	7-1-2010	Suspend	8-1-2010	414-205-0170	1-1-2010	Amend(T)	2-1-2010
413-130-0160	7-1-2010	Suspend	8-1-2010	414-205-0170	7-1-2010	Amend	8-1-2010
413-130-0170	7-1-2010	Suspend	8-1-2010	414-300-0000	1-1-2010	Amend(T)	2-1-2010

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414-300-0005	1-1-2010	Amend(T)	2-1-2010	414-300-0400	1-1-2010	Amend(T)	2-1-2010
414-300-0005	7-1-2010	Amend	8-1-2010	414-300-0410	1-1-2010	Amend(T)	2-1-2010
414-300-0010	1-1-2010	Amend(T)	2-1-2010	414-300-0410	7-1-2010	Amend	8-1-2010
414-300-0010	7-1-2010	Amend	8-1-2010	414-300-0415	1-1-2010	Adopt(T)	2-1-2010
414-300-0015	1-1-2010	Amend(T)	2-1-2010	414-300-0415	7-1-2010	Adopt	8-1-2010
414-300-0015	7-1-2010	Amend	8-1-2010	414-350-0000	1-1-2010	Amend(T)	2-1-2010
414-300-0020	1-1-2010	Amend(T)	2-1-2010	414-350-0000	7-1-2010	Amend	8-1-2010
414-300-0020	7-1-2010	Amend	8-1-2010	414-350-0010	1-1-2010	Amend(T)	2-1-2010
414-300-0030	1-1-2010	Amend(T)	2-1-2010	414-350-0010	7-1-2010	Amend	8-1-2010
414-300-0030	7-1-2010	Amend	8-1-2010	414-350-0020	1-1-2010	Amend(T)	2-1-2010
414-300-0040	1-1-2010	Amend(T)	2-1-2010	414-350-0020	7-1-2010	Amend	8-1-2010
414-300-0040	7-1-2010	Amend	8-1-2010	414-350-0030	1-1-2010	Amend(T)	2-1-2010
414-300-0050	1-1-2010	Amend(T)	2-1-2010	414-350-0030	7-1-2010	Amend	8-1-2010
414-300-0060	1-1-2010	Amend(T)	2-1-2010	414-350-0040	1-1-2010	Amend(T)	2-1-2010
414-300-0060	7-1-2010	Amend	8-1-2010	414-350-0040	7-1-2010	Amend	8-1-2010
414-300-0070	1-1-2010	Amend(T)	2-1-2010	414-350-0050	1-1-2010	Amend(T)	2-1-2010
414-300-0070	7-1-2010	Amend	8-1-2010	414-350-0050	7-1-2010	Amend	8-1-2010
414-300-0080	1-1-2010	Amend(T)	2-1-2010	414-350-0060	1-1-2010	Amend(T)	2-1-2010
414-300-0080	7-1-2010	Amend	8-1-2010	414-350-0070	1-1-2010	Amend(T)	2-1-2010
414-300-0090	1-1-2010	Amend(T)	2-1-2010	414-350-0080	1-1-2010	Amend(T)	2-1-2010
414-300-0100	1-1-2010	Amend(T)	2-1-2010	414-350-0080	7-1-2010	Amend	8-1-2010
414-300-0110	1-1-2010	Amend(T)	2-1-2010	414-350-0090	1-1-2010	Amend(T)	2-1-2010
414-300-0115	1-1-2010	Amend(T)	2-1-2010	414-350-0090	7-1-2010	Amend	8-1-2010
414-300-0120	1-1-2010	Amend(T)	2-1-2010	414-350-0100	1-1-2010	Amend(T)	2-1-2010
414-300-0120	7-1-2010	Amend	8-1-2010	414-350-0100	7-1-2010	Amend	8-1-2010
414-300-0130	1-1-2010	Amend(T)	2-1-2010	414-350-0110	1-1-2010	Amend(T)	2-1-2010
414-300-0130	7-1-2010	Amend	8-1-2010	414-350-0110	7-1-2010	Amend	8-1-2010
414-300-0140	1-1-2010	Amend(T)	2-1-2010	414-350-0115	1-1-2010	Amend(T)	2-1-2010
414-300-0150	1-1-2010	Amend(T)	2-1-2010	414-350-0120	1-1-2010	Amend(T)	2-1-2010
414-300-0160	1-1-2010	Amend(T)	2-1-2010	414-350-0130	1-1-2010	Amend(T)	2-1-2010
414-300-0170	1-1-2010	Amend(T)	2-1-2010	414-350-0140	1-1-2010	Amend(T)	2-1-2010
414-300-0180	1-1-2010	Amend(T)	2-1-2010	414-350-0150	1-1-2010	Amend(T)	2-1-2010
414-300-0190	1-1-2010	Amend(T)	2-1-2010	414-350-0160	1-1-2010	Amend(T)	2-1-2010
414-300-0200	1-1-2010	Amend(T)	2-1-2010	414-350-0170	1-1-2010	Amend(T)	2-1-2010
414-300-0210	1-1-2010	Amend(T)	2-1-2010	414-350-0180	1-1-2010	Amend(T)	2-1-2010
414-300-0215	1-1-2010	Amend(T)	2-1-2010	414-350-0190	1-1-2010	Amend(T)	2-1-2010
414-300-0220	1-1-2010	Amend(T)	2-1-2010	414-350-0200	1-1-2010	Amend(T)	2-1-2010
414-300-0230	1-1-2010	Amend(T)	2-1-2010	414-350-0210	1-1-2010	Amend(T)	2-1-2010
414-300-0240	1-1-2010	Amend(T)	2-1-2010	414-350-0220	1-1-2010	Amend(T)	2-1-2010
414-300-0250	1-1-2010	Amend(T)	2-1-2010	414-350-0230	1-1-2010	Amend(T)	2-1-2010
414-300-0260	1-1-2010	Amend(T)	2-1-2010	414-350-0235	1-1-2010	Amend(T)	2-1-2010
414-300-0270	1-1-2010	Amend(T)	2-1-2010	414-350-0240	1-1-2010	Amend(T)	2-1-2010
414-300-0280	1-1-2010	Amend(T)	2-1-2010	414-350-0250	1-1-2010	Amend(T)	2-1-2010
414-300-0290	1-1-2010	Amend(T)	2-1-2010	414-350-0375	1-1-2010	Amend(T)	2-1-2010
414-300-0295	1-1-2010	Amend(T)	2-1-2010	414-350-0380	1-1-2010	Amend(T)	2-1-2010
414-300-0300	1-1-2010	Amend(T)	2-1-2010	414-350-0390	1-1-2010	Amend(T)	2-1-2010
414-300-0310	1-1-2010	Amend(T)	2-1-2010	414-350-0400	1-1-2010	Amend(T)	2-1-2010
414-300-0320	1-1-2010	Amend(T)	2-1-2010	414-350-0400	7-1-2010	Amend	8-1-2010
414-300-0330	1-1-2010	Amend(T)	2-1-2010	414-350-0405	1-1-2010	Adopt(T)	2-1-2010
414-300-0340	1-1-2010	Amend(T)	2-1-2010	414-350-0405	7-1-2010	Adopt	8-1-2010
414-300-0350	1-1-2010	Amend(T)	2-1-2010	414-425-0000	7-1-2010	Adopt	8-1-2010
414-300-0360	1-1-2010	Amend(T)	2-1-2010	414-425-0010	7-1-2010	Adopt	8-1-2010
414-300-0360	7-1-2010	Amend	8-1-2010	414-425-0020	7-1-2010	Adopt	8-1-2010
414-300-0380	1-1-2010	Amend(T)	2-1-2010	414-425-0025	7-1-2010	Adopt	8-1-2010
414-300-0390	1-1-2010	Amend(T)	2-1-2010	414-425-0030	7-1-2010	Adopt	8-1-2010

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414-450-0000	7-1-2010	Adopt	8-1-2010	415-065-0005	7-1-2010	Adopt	8-1-2010
414-450-0010	7-1-2010	Adopt	8-1-2010	415-065-0010	7-1-2010	Adopt	8-1-2010
414-450-0020	7-1-2010	Adopt	8-1-2010	415-065-0015	7-1-2010	Adopt	8-1-2010
414-450-0025	7-1-2010	Adopt	8-1-2010	415-065-0020	7-1-2010	Adopt	8-1-2010
414-450-0030	7-1-2010	Adopt	8-1-2010	415-065-0025	7-1-2010	Adopt	8-1-2010
414-450-0040	7-1-2010	Adopt	8-1-2010	415-065-0030	7-1-2010	Adopt	8-1-2010
415-051-0000	3-4-2010	Repeal	4-1-2010	415-065-0035	7-1-2010	Adopt	8-1-2010
415-051-0005	5-6-2010	Repeal	6-1-2010	415-065-0040	7-1-2010	Adopt	8-1-2010
415-051-0010	3-4-2010	Repeal	4-1-2010	415-065-0045	7-1-2010	Adopt	8-1-2010
415-051-0015	3-4-2010	Repeal	4-1-2010	415-065-0050	7-1-2010	Adopt	8-1-2010
415-051-0020	3-4-2010	Repeal	4-1-2010	415-065-0055	7-1-2010	Adopt	8-1-2010
415-051-0025	3-4-2010	Repeal	4-1-2010	415-065-0060	7-1-2010	Adopt	8-1-2010
415-051-0030	3-4-2010	Repeal	4-1-2010	415-065-0065	7-1-2010	Adopt	8-1-2010
415-051-0035	3-4-2010	Repeal	4-1-2010	415-065-0070	7-1-2010	Adopt	8-1-2010
415-051-0037	3-4-2010	Repeal	4-1-2010	416-470-0000	2-19-2010	Amend	3-1-2010
415-051-0040	3-4-2010	Repeal	4-1-2010	416-470-0010	2-19-2010	Amend	3-1-2010
415-051-0045	3-4-2010	Repeal	4-1-2010	416-470-0020	2-19-2010	Amend	3-1-2010
415-051-0050	3-4-2010	Repeal	4-1-2010	416-470-0030	2-19-2010	Amend	3-1-2010
415-051-0055	3-4-2010	Repeal	4-1-2010	416-470-0040	2-19-2010	Amend	3-1-2010
415-051-0057	3-4-2010	Repeal	4-1-2010	416-470-0050	2-19-2010	Amend	3-1-2010
415-051-0060	3-4-2010	Repeal	4-1-2010	416-470-0060	2-19-2010	Repeal	3-1-2010
415-051-0065	3-4-2010	Repeal	4-1-2010	416-470-0070	2-19-2010	Repeal	3-1-2010
415-051-0067	3-4-2010	Repeal	4-1-2010	416-470-0080	2-19-2010	Repeal	3-1-2010
415-051-0069	3-4-2010	Repeal	4-1-2010	416-470-0090	2-19-2010	Repeal	3-1-2010
415-051-0072	3-4-2010	Repeal	4-1-2010	416-470-0100	2-19-2010	Repeal	3-1-2010
415-051-0075	3-4-2010	Repeal	4-1-2010	416-490-0000	2-19-2010	Amend	3-1-2010
415-051-0077	3-4-2010	Repeal	4-1-2010	416-490-0010	2-19-2010	Amend	3-1-2010
415-051-0080	5-6-2010	Repeal	6-1-2010	416-490-0020	2-19-2010	Amend	3-1-2010
415-051-0090	3-4-2010	Repeal	4-1-2010	416-490-0030	2-19-2010	Amend	3-1-2010
415-051-0100	3-4-2010	Repeal	4-1-2010	416-490-0031	2-19-2010	Adopt	3-1-2010
415-051-0105	3-4-2010	Repeal	4-1-2010	416-490-0032	2-19-2010	Adopt	3-1-2010
415-051-0110	3-4-2010	Repeal	4-1-2010	416-490-0033	2-19-2010	Adopt	3-1-2010
415-051-0130	3-4-2010	Repeal	4-1-2010	416-490-0034	2-19-2010	Adopt	3-1-2010
415-051-0140	3-4-2010	Repeal	4-1-2010	416-490-0035	2-19-2010	Adopt	3-1-2010
415-051-0155	3-4-2010	Repeal	4-1-2010	416-490-0040	2-19-2010	Repeal	3-1-2010
415-051-0165	3-4-2010	Repeal	4-1-2010	416-490-0050	2-19-2010	Amend	3-1-2010
415-052-0100	12-3-2009	Adopt	1-1-2010	416-530-0090	12-16-2009	Amend	1-1-2010
415-052-0105	12-3-2009	Adopt	1-1-2010	416-800-0000	6-25-2010	Amend	7-1-2010
415-052-0110	12-3-2009	Adopt	1-1-2010	416-800-0010	6-25-2010	Amend	7-1-2010
415-057-0000	5-6-2010	Adopt	6-1-2010	416-800-0020	6-25-2010	Amend	7-1-2010
415-057-0010	5-6-2010	Adopt	6-1-2010	416-800-0031	6-25-2010	Adopt	7-1-2010
415-057-0020	5-6-2010	Adopt	6-1-2010	416-800-0041	6-25-2010	Adopt	7-1-2010
415-057-0030	5-6-2010	Adopt	6-1-2010	416-800-0045	6-25-2010	Adopt	7-1-2010
415-057-0040	5-6-2010	Adopt	6-1-2010	416-800-0050	6-25-2010	Adopt	7-1-2010
415-057-0050	5-6-2010	Adopt	6-1-2010	416-800-0055	6-25-2010	Adopt	7-1-2010
415-057-0060	5-6-2010	Adopt	6-1-2010	416-800-0060	6-25-2010	Repeal	7-1-2010
415-057-0070	5-6-2010	Adopt	6-1-2010	416-800-0065	6-25-2010	Adopt	7-1-2010
415-057-0080	5-6-2010	Adopt	6-1-2010	416-800-0070	6-25-2010	Amend	7-1-2010
415-057-0090	5-6-2010	Adopt	6-1-2010	416-800-0080	6-25-2010	Adopt	7-1-2010
415-057-0100	5-6-2010	Adopt	6-1-2010	416-800-0090	6-25-2010	Adopt	7-1-2010
415-057-0110	5-6-2010	Adopt	6-1-2010	416-800-0095	6-25-2010	Adopt	7-1-2010
415-057-0120	5-6-2010	Adopt	6-1-2010	436-001-0003	1-1-2010	Amend	1-1-2010
415-057-0130	5-6-2010	Adopt	6-1-2010	436-001-0019	1-1-2010	Amend	1-1-2010
415-057-0140	5-6-2010	Adopt	6-1-2010	436-001-0265	1-1-2010	Am. & Ren.	1-1-2010
415-057-0150	5-6-2010	Adopt	6-1-2010	436-001-0265	1-1-2010	Am. & Ren.	1-1-2010

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436-001-0430	1-1-2010	Adopt	1-1-2010	436-030-0155	1-1-2010	Amend	1-1-2010
436-001-0440	1-1-2010	Adopt	1-1-2010	436-030-0165	1-1-2010	Amend	1-1-2010
436-009-0002	7-1-2010	Amend	7-1-2010	436-030-0185	1-1-2010	Amend	1-1-2010
436-009-0003	7-1-2010	Amend	7-1-2010	436-030-0580	1-1-2010	Amend	1-1-2010
436-009-0004	7-1-2010	Amend	7-1-2010	436-035-0002	6-1-2010	Amend	6-1-2010
436-009-0005	7-1-2010	Amend	7-1-2010	436-035-0003	6-1-2010	Amend	6-1-2010
436-009-0008	7-1-2010	Amend	7-1-2010	436-035-0005	6-1-2010	Amend	6-1-2010
436-009-0010	1-1-2010	Amend	1-1-2010	436-035-0007	6-1-2010	Amend	6-1-2010
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436-009-0060	7-1-2010	Amend	7-1-2010	436-035-0110	6-1-2010	Amend	6-1-2010
436-009-0070	1-1-2010	Amend	1-1-2010	436-035-0190	6-1-2010	Amend	6-1-2010
436-009-0070	7-1-2010	Amend	7-1-2010	436-035-0230	6-1-2010	Amend	6-1-2010
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436-009-0110	7-1-2010	Adopt	7-1-2010	436-035-0370	6-1-2010	Amend	6-1-2010
436-009-0115	7-1-2010	Adopt	7-1-2010	436-035-0375	6-1-2010	Amend	6-1-2010
436-009-0120	7-1-2010	Adopt	7-1-2010	436-035-0390	6-1-2010	Amend	6-1-2010
436-009-0125	7-1-2010	Adopt	7-1-2010	436-035-0400	6-1-2010	Amend	6-1-2010
436-009-0130	7-1-2010	Adopt	7-1-2010	436-035-0410	6-1-2010	Amend	6-1-2010
436-009-0135	7-1-2010	Adopt	7-1-2010	436-035-0420	6-1-2010	Amend	6-1-2010
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436-009-0145	7-1-2010	Adopt	7-1-2010	436-060-0003	1-1-2010	Amend	1-1-2010
436-009-0150	7-1-2010	Adopt	7-1-2010	436-060-0008	1-1-2010	Amend	1-1-2010
436-009-0155	7-1-2010	Adopt	7-1-2010	436-060-0009	1-1-2010	Amend	1-1-2010
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436-009-0165	7-1-2010	Adopt	7-1-2010	436-060-0012	1-1-2010	Adopt	1-1-2010
436-009-0170	7-1-2010	Adopt	7-1-2010	436-060-0015	1-1-2010	Amend	1-1-2010
436-009-0175	7-1-2010	Adopt	7-1-2010	436-060-0017	1-1-2010	Amend	1-1-2010
436-009-0180	7-1-2010	Adopt	7-1-2010	436-060-0018	1-1-2010	Amend	1-1-2010
436-009-0185	7-1-2010	Adopt	7-1-2010	436-060-0020	1-1-2010	Amend	1-1-2010
436-010-0008	1-1-2010	Amend	1-1-2010	436-060-0025	1-1-2010	Amend	1-1-2010
436-010-0225	7-1-2010	Adopt	7-1-2010	436-060-0035	1-1-2010	Amend	1-1-2010
436-010-0240	1-1-2010	Amend	1-1-2010	436-060-0095	1-1-2010	Amend	1-1-2010
436-010-0265	1-1-2010	Amend	1-1-2010	436-060-0105	1-1-2010	Amend	1-1-2010
436-010-0280	1-1-2010	Amend	1-1-2010	436-060-0135	1-1-2010	Amend	1-1-2010
436-010-0330	7-1-2010	Amend	7-1-2010	436-060-0137	1-1-2010	Amend	1-1-2010
436-015-0090	7-1-2010	Amend	7-1-2010	436-060-0140	1-1-2010	Amend	1-1-2010
436-030-0002	1-1-2010	Amend	1-1-2010	436-060-0147	1-1-2010	Amend	1-1-2010
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436-030-0007	1-1-2010	Amend	1-1-2010	436-060-0155	1-1-2010	Amend	1-1-2010
436-030-0009	1-1-2010	Repeal	1-1-2010	436-060-0180	1-1-2010	Amend	1-1-2010
436-030-0015	1-1-2010	Amend	1-1-2010	436-060-0195	1-1-2010	Amend	1-1-2010
436-030-0017	1-1-2010	Amend	1-1-2010	436-060-0200	1-1-2010	Amend	1-1-2010
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436-105-0520	1-1-2010	Amend	1-1-2010	437-002-2102	2-19-2010	Adopt	4-1-2010
436-105-0540	1-1-2010	Amend	1-1-2010	437-003-0001	6-15-2010	Amend	7-1-2010
436-105-0550	1-1-2010	Amend	1-1-2010	437-004-0002	1-1-2011	Amend	8-1-2010
436-110-0005	1-1-2010	Amend	1-1-2010	437-004-0003	1-1-2011	Amend	8-1-2010
436-110-0240	4-15-2010	Amend(T)	5-1-2010	437-004-0004	1-1-2011	Repeal	8-1-2010
436-110-0290	4-15-2010	Amend(T)	5-1-2010	437-004-0099	1-1-2011	Amend	8-1-2010
436-110-0310	1-1-2010	Amend	1-1-2010	437-004-0240	1-1-2011	Amend	8-1-2010
436-110-0325	1-1-2010	Amend	1-1-2010	437-004-0250	1-1-2011	Repeal	8-1-2010
436-110-0330	1-1-2010	Amend	1-1-2010	437-004-0251	1-1-2011	Adopt	8-1-2010
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436-110-0336	1-1-2010	Amend	1-1-2010	437-004-1050	2-25-2010	Amend	4-1-2010
436-110-0336	4-15-2010	Amend(T)	5-1-2010	437-004-1060	2-25-2010	Amend	4-1-2010
436-110-0337	1-1-2010	Amend	1-1-2010	437-004-1305	1-1-2011	Amend	8-1-2010
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436-110-0347	1-1-2010	Amend	1-1-2010	437-005-0001	2-25-2010	Amend	4-1-2010
436-110-0350	1-1-2010	Amend	1-1-2010	437-005-0001	6-15-2010	Amend	7-1-2010
436-110-0351	4-15-2010	Amend(T)	5-1-2010	437-005-0002	2-25-2010	Amend	4-1-2010
436-110-0900	1-1-2010	Amend	1-1-2010	437-005-0003	2-25-2010	Amend	4-1-2010
436-120-0004	1-1-2010	Amend	1-1-2010	437-007-0305	2-25-2010	Amend	4-1-2010
436-120-0005	1-1-2010	Amend	1-1-2010	440-005-0015	5-1-2010	Amend	5-1-2010
436-120-0007	1-1-2010	Amend	1-1-2010	440-005-0020	5-1-2010	Amend	5-1-2010
436-120-0008	1-1-2010	Amend	1-1-2010	440-005-0025	5-1-2010	Amend	5-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010	440-005-0030	5-1-2010	Amend	5-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010	440-015-0001	2-1-2010	Repeal	3-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010	440-015-0010	2-1-2010	Repeal	3-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010	440-015-0020	2-1-2010	Repeal	3-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010	440-015-0030	2-1-2010	Repeal	3-1-2010
436-120-0320	1-1-2010	Am. & Ren.	1-1-2010	440-015-0040	2-1-2010	Repeal	3-1-2010
436-120-0340	1-1-2010	Amend	1-1-2010	440-015-0050	2-1-2010	Repeal	3-1-2010
436-120-0350	1-1-2010	Am. & Ren.	1-1-2010	440-015-0060	2-1-2010	Repeal	3-1-2010
436-120-0350	1-1-2010	Am. & Ren.	1-1-2010	440-015-0070	2-1-2010	Repeal	3-1-2010
436-120-0360	1-1-2010	Am. & Ren.	1-1-2010	440-015-0080	2-1-2010	Repeal	3-1-2010
436-120-0410	1-1-2010	Amend	1-1-2010	440-015-0090	2-1-2010	Repeal	3-1-2010
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436-120-0510	1-1-2010	Amend	1-1-2010	440-015-0110	2-1-2010	Adopt	3-1-2010
436-120-0720	1-1-2010	Amend	1-1-2010	440-015-0115	2-1-2010	Adopt	3-1-2010
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437-002-0100	2-19-2010	Amend	4-1-2010	441-730-0010	6-4-2010	Amend	7-1-2010
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441-730-0027	3-22-2010	Adopt	5-1-2010	441-740-0000	5-6-2010	Amend	6-1-2010
441-730-0030	6-4-2010	Amend	7-1-2010	441-740-0010	5-6-2010	Amend	6-1-2010
441-730-0050	6-4-2010	Amend	7-1-2010	441-740-0015	5-6-2010	Amend	6-1-2010
441-730-0070	3-22-2010	Amend	5-1-2010	441-740-0050	5-6-2010	Repeal	6-1-2010
441-730-0070	6-4-2010	Amend	7-1-2010	441-850-0005	1-4-2010	Amend	2-1-2010
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441-730-0100	6-4-2010	Amend	7-1-2010	441-850-0042	12-7-2009	Amend	1-1-2010
441-730-0110	6-4-2010	Amend	7-1-2010	441-850-0042(T)	12-7-2009	Repeal	1-1-2010
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441-730-0125	3-22-2010	Adopt	5-1-2010	441-860-0010	1-4-2010	Repeal	2-1-2010
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441-730-0140	6-4-2010	Amend	7-1-2010	441-860-0020	1-4-2010	Amend	2-1-2010
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441-730-0170	6-4-2010	Amend	7-1-2010	441-860-0030	1-4-2010	Amend	2-1-2010
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441-730-0205	6-4-2010	Amend	7-1-2010	441-860-0050	1-4-2010	Amend	2-1-2010
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441-730-0280	6-4-2010	Amend	7-1-2010	441-865-0010	1-4-2010	Amend	2-1-2010
441-730-0310	6-4-2010	Repeal	7-1-2010	441-865-0020	1-4-2010	Amend	2-1-2010
441-730-0320	3-22-2010	Amend	5-1-2010	441-865-0025	1-4-2010	Amend	2-1-2010
441-730-0320	6-4-2010	Amend	7-1-2010	441-865-0025	3-22-2010	Amend	5-1-2010
441-735-0000	6-4-2010	Adopt	7-1-2010	441-865-0030	1-4-2010	Amend	2-1-2010
441-735-0010	6-4-2010	Adopt	7-1-2010	441-865-0040	1-4-2010	Amend	2-1-2010
441-735-0015	6-4-2010	Adopt	7-1-2010	441-865-0050	1-4-2010	Amend	2-1-2010
441-735-0025	6-4-2010	Adopt	7-1-2010	441-865-0060	3-22-2010	Amend	5-1-2010
441-735-0030	6-4-2010	Adopt	7-1-2010	441-865-0080	1-4-2010	Amend	2-1-2010
441-735-0050	6-4-2010	Adopt	7-1-2010	441-865-0090	1-4-2010	Amend	2-1-2010
441-735-0060	6-4-2010	Adopt	7-1-2010	441-870-0030	1-4-2010	Amend	2-1-2010
441-735-0070	6-4-2010	Adopt	7-1-2010	441-870-0040	1-4-2010	Amend	2-1-2010
441-735-0080	6-4-2010	Adopt	7-1-2010	441-870-0050	1-4-2010	Amend	2-1-2010
441-735-0100	6-4-2010	Adopt	7-1-2010	441-870-0070	1-4-2010	Amend	2-1-2010
441-735-0110	6-4-2010	Adopt	7-1-2010	441-870-0080	1-4-2010	Amend	2-1-2010
441-735-0120	6-4-2010	Adopt	7-1-2010	441-870-0080	3-22-2010	Amend	5-1-2010
441-735-0130	6-4-2010	Adopt	7-1-2010	441-870-0081	3-22-2010	Adopt	5-1-2010
441-735-0140	6-4-2010	Adopt	7-1-2010	441-875-0010	1-4-2010	Repeal	2-1-2010
441-735-0160	6-4-2010	Adopt	7-1-2010	441-875-0020	1-4-2010	Amend	2-1-2010
441-735-0165	6-4-2010	Adopt	7-1-2010	441-875-0030	1-4-2010	Amend	2-1-2010
441-735-0205	6-4-2010	Adopt	7-1-2010	441-875-0040	1-4-2010	Amend	2-1-2010
441-735-0240	6-4-2010	Adopt	7-1-2010	441-880-0010	1-4-2010	Amend	2-1-2010
441-735-0250	6-4-2010	Adopt	7-1-2010	441-880-0020	1-4-2010	Am. & Ren.	2-1-2010
441-735-0255	6-4-2010	Adopt	7-1-2010	441-880-0021	1-4-2010	Adopt	2-1-2010
441-735-0271	6-4-2010	Adopt	7-1-2010	441-880-0022	1-4-2010	Adopt	2-1-2010
441-735-0272	6-4-2010	Adopt	7-1-2010	441-880-0030	1-4-2010	Amend	2-1-2010
441-735-0275	6-4-2010	Adopt	7-1-2010	441-880-0040	1-4-2010	Amend	2-1-2010
441-735-0280	6-4-2010	Adopt	7-1-2010	441-880-0050	1-4-2010	Am. & Ren.	2-1-2010

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441-880-0210	1-4-2010	Adopt	2-1-2010	459-009-0120	5-28-2010	Repeal	7-1-2010
441-880-0300	1-4-2010	Adopt	2-1-2010	459-010-0010	5-28-2010	Amend	7-1-2010
441-880-0310	1-4-2010	Adopt	2-1-2010	459-010-0014	5-28-2010	Amend	7-1-2010
441-885-0010	1-4-2010	Amend	2-1-2010	459-010-0042	5-28-2010	Repeal	7-1-2010
441-910-0000	1-1-2010	Amend	2-1-2010	459-011-0050	5-28-2010	Amend	7-1-2010
441-910-0005	1-1-2010	Adopt	2-1-2010	459-014-0100	5-28-2010	Repeal	7-1-2010
441-910-0010	1-1-2010	Amend	2-1-2010	459-015-0001	5-28-2010	Amend	7-1-2010
441-910-0020	1-1-2010	Repeal	2-1-2010	459-015-0005	5-28-2010	Amend	7-1-2010
441-910-0030	1-1-2010	Amend	2-1-2010	459-015-0060	6-17-2010	Repeal	8-1-2010
441-910-0040	1-1-2010	Repeal	2-1-2010	459-017-0060	12-1-2009	Amend	1-1-2010
441-910-0050	1-1-2010	Amend	2-1-2010	459-035-0000	4-5-2010	Amend(T)	5-1-2010
441-910-0055	1-1-2010	Amend	2-1-2010	459-035-0001	4-5-2010	Amend(T)	5-1-2010
441-910-0080	1-1-2010	Amend	2-1-2010	459-035-0020	4-5-2010	Amend(T)	5-1-2010
441-910-0090	1-1-2010	Repeal	2-1-2010	459-035-0030	4-5-2010	Amend(T)	5-1-2010
441-910-0091	1-1-2010	Adopt	2-1-2010	459-035-0040	4-5-2010	Amend(T)	5-1-2010
441-910-0092	1-1-2010	Amend	2-1-2010	459-045-0000	5-28-2010	Repeal	7-1-2010
441-910-0092(T)	1-1-2010	Repeal	2-1-2010	459-045-0001	5-28-2010	Amend	7-1-2010
441-910-0093	1-1-2010	Repeal	2-1-2010	459-045-0010	5-28-2010	Amend	7-1-2010
441-910-0094	1-1-2010	Adopt	2-1-2010	459-045-0012	5-28-2010	Adopt	7-1-2010
441-910-0095	1-1-2010	Repeal	2-1-2010	459-045-0014	5-28-2010	Adopt	7-1-2010
441-910-0099	1-1-2010	Adopt	2-1-2010	459-045-0020	5-28-2010	Amend	7-1-2010
441-910-0110	1-1-2010	Repeal	2-1-2010	459-045-0030	5-28-2010	Amend	7-1-2010
441-910-0120	1-1-2010	Repeal	2-1-2010	459-045-0032	5-28-2010	Adopt	7-1-2010
441-910-0135	1-1-2010	Adopt	2-1-2010	459-045-0034	5-28-2010	Adopt	7-1-2010
441-910-0145	1-1-2010	Adopt	2-1-2010	459-045-0040	5-28-2010	Amend	7-1-2010
441-910-0150	1-1-2010	Adopt	2-1-2010	459-045-0050	5-28-2010	Amend	7-1-2010
441-910-0151	1-1-2010	Adopt	2-1-2010	459-045-0060	5-28-2010	Amend	7-1-2010
441-910-0200	1-1-2010	Adopt	2-1-2010	459-045-0080	5-28-2010	Amend	7-1-2010
441-910-9000(T)	1-6-2010	Suspend	2-1-2010	459-045-0090	5-28-2010	Amend	7-1-2010
441-910-9001(T)	1-6-2010	Suspend	2-1-2010	459-075-0150	5-28-2010	Amend	7-1-2010
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442-005-0050	1-7-2010	Amend(T)	2-1-2010	461-001-0015	4-1-2010	Amend	5-1-2010
442-005-0060	1-7-2010	Amend(T)	2-1-2010	461-025-0310	1-1-2010	Amend	2-1-2010
442-005-0100	1-7-2010	Amend(T)	2-1-2010	461-101-0010	1-1-2010	Amend	2-1-2010
442-010-0010	3-23-2010	Adopt(T)	5-1-2010	461-101-0010	1-1-2010	Amend(T)	2-1-2010
442-010-0020	3-23-2010	Adopt(T)	5-1-2010	461-101-0010	7-1-2010	Amend	8-1-2010
442-010-0030	3-23-2010	Adopt(T)	5-1-2010	461-101-0010(T)	1-1-2010	Repeal	2-1-2010
442-010-0040	3-23-2010	Adopt(T)	5-1-2010	461-105-0006	1-1-2010	Adopt	2-1-2010
442-010-0050	3-23-2010	Adopt(T)	5-1-2010	461-105-0006	4-1-2010	Amend	5-1-2010
442-010-0060	3-23-2010	Adopt(T)	5-1-2010	461-105-0006(T)	1-1-2010	Repeal	2-1-2010
442-010-0070	3-23-2010	Adopt(T)	5-1-2010	461-110-0210	1-1-2010	Amend	2-1-2010
442-010-0080	3-23-2010	Adopt(T)	5-1-2010	461-110-0210	1-1-2010	Amend(T)	2-1-2010
442-010-0090	3-23-2010	Adopt(T)	5-1-2010	461-110-0210	7-1-2010	Amend	8-1-2010
442-010-0100	3-23-2010	Adopt(T)	5-1-2010	461-110-0210(T)	1-1-2010	Repeal	2-1-2010
442-010-0110	3-23-2010	Adopt(T)	5-1-2010	461-110-0370	1-1-2010	Amend	2-1-2010
442-010-0120	3-23-2010	Adopt(T)	5-1-2010	461-110-0400	1-1-2010	Amend(T)	2-1-2010
442-010-0130	3-23-2010	Adopt(T)	5-1-2010	461-110-0400	7-1-2010	Amend	8-1-2010
442-010-0140	3-23-2010	Adopt(T)	5-1-2010	461-110-0430	1-1-2010	Amend	2-1-2010
442-010-0150	3-23-2010	Adopt(T)	5-1-2010	461-110-0530	1-1-2010	Amend(T)	2-1-2010
442-010-0160	3-23-2010	Adopt(T)	5-1-2010	461-110-0530	7-1-2010	Amend	8-1-2010
442-010-0170	3-23-2010	Adopt(T)	5-1-2010	461-110-0630	1-1-2010	Amend(T)	2-1-2010
442-010-0180	3-23-2010	Adopt(T)	5-1-2010	461-110-0630	7-1-2010	Amend	8-1-2010
442-010-0190	3-23-2010	Adopt(T)	5-1-2010	461-115-0030	1-1-2010	Amend	2-1-2010
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461-115-0050	1-1-2010	Amend	2-1-2010	461-135-0498	4-1-2010	Adopt	5-1-2010
461-115-0050	1-1-2010	Amend(T)	2-1-2010	461-135-0570	2-5-2010	Amend(T)	3-1-2010
461-115-0050	7-1-2010	Amend	8-1-2010	461-135-0570	4-1-2010	Amend	5-1-2010
461-115-0050(T)	1-1-2010	Repeal	2-1-2010	461-135-0570	4-1-2010	Amend(T)	5-1-2010
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461-115-0071	7-15-2010	Amend(T)	8-1-2010	461-135-0570(T)	4-1-2010	Repeal	5-1-2010
461-115-0090	1-1-2010	Amend	2-1-2010	461-135-0570(T)	7-1-2010	Repeal	8-1-2010
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461-115-0230	4-1-2010	Amend	5-1-2010	461-135-0730	4-1-2010	Amend	5-1-2010
461-115-0230	4-1-2010	Amend(T)	5-1-2010	461-135-0832	4-1-2010	Amend	5-1-2010
461-115-0230	7-1-2010	Amend	8-1-2010	461-135-0835	1-1-2010	Amend	2-1-2010
461-115-0230(T)	4-1-2010	Repeal	5-1-2010	461-135-0835	4-1-2010	Amend	5-1-2010
461-115-0430	1-1-2010	Amend(T)	2-1-2010	461-135-0835	5-27-2010	Amend(T)	7-1-2010
461-115-0430	4-1-2010	Amend	5-1-2010	461-135-0900	5-17-2010	Amend(T)	7-1-2010
461-115-0430	4-1-2010	Amend(T)	5-1-2010	461-135-0990	1-1-2010	Amend	2-1-2010
461-115-0430	7-1-2010	Amend	8-1-2010	461-135-0990(T)	1-1-2010	Repeal	2-1-2010
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461-115-0530	7-1-2010	Amend(T)	8-1-2010	461-135-1100	1-1-2010	Amend	2-1-2010
461-115-0651	4-1-2010	Amend	5-1-2010	461-135-1100	1-1-2010	Amend(T)	2-1-2010
461-115-0690	4-1-2010	Amend	5-1-2010	461-135-1100	4-21-2010	Amend(T)	6-1-2010
461-115-0705	1-1-2010	Amend	2-1-2010	461-135-1100	7-1-2010	Amend	8-1-2010
461-115-0705	1-1-2010	Amend(T)	2-1-2010	461-135-1100	7-1-2010	Amend(T)	8-1-2010
461-115-0705	5-28-2010	Amend(T)	7-1-2010	461-135-1100	7-15-2010	Amend(T)	8-1-2010
461-115-0705	7-1-2010	Amend	8-1-2010	461-135-1100(T)	12-1-2009	Suspend	1-1-2010
461-115-0705	7-1-2010	Amend(T)	8-1-2010	461-135-1100(T)	1-1-2010	Repeal	2-1-2010
461-115-0705(T)	1-1-2010	Repeal	2-1-2010	461-135-1100(T)	4-21-2010	Suspend	6-1-2010
461-115-0705(T)	5-28-2010	Suspend	7-1-2010	461-135-1100(T)	7-15-2010	Suspend	8-1-2010
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461-120-0125(T)	1-1-2010	Repeal	2-1-2010	461-135-1125	4-21-2010	Amend(T)	6-1-2010
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461-120-0210	7-1-2010	Amend	8-1-2010	461-135-1149	1-1-2010	Amend(T)	2-1-2010
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461-120-0310	1-1-2010	Amend	2-1-2010	461-135-1149(T)	1-1-2010	Repeal	2-1-2010
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461-120-0510(T)	1-1-2010	Repeal	2-1-2010	461-135-1195(T)	4-1-2010	Repeal	5-1-2010
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461-125-0310	1-1-2010	Amend	2-1-2010	461-145-0022	4-1-2010	Amend	5-1-2010
461-135-0095	1-1-2010	Amend	2-1-2010	461-145-0040	7-1-2010	Amend	8-1-2010
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461-135-0096	1-1-2010	Amend	2-1-2010	461-145-0130	1-1-2010	Amend(T)	2-1-2010
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461-145-0143	7-1-2010	Amend	8-1-2010	461-165-0030	7-1-2010	Amend	8-1-2010
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461-145-0143(T)	1-1-2010	Repeal	2-1-2010	461-165-0100	7-1-2010	Amend	8-1-2010
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461-145-0260	1-1-2010	Amend	2-1-2010	461-165-0200	4-1-2010	Amend	5-1-2010
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461-145-0405	1-1-2010	Amend	2-1-2010	461-165-0230	1-1-2010	Amend	2-1-2010
461-145-0550	11-24-2009	Amend(T)	1-1-2010	461-170-0010	1-1-2010	Amend(T)	2-1-2010
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461-155-0250	1-1-2010	Amend	2-1-2010	461-175-0270	4-1-2010	Amend	5-1-2010
461-155-0270	1-1-2010	Amend(T)	2-1-2010	461-175-0300	7-1-2010	Amend	8-1-2010
461-155-0270	7-1-2010	Amend	8-1-2010	461-180-0050	4-1-2010	Amend	5-1-2010
461-155-0360	1-1-2010	Amend	2-1-2010	461-180-0050	7-1-2010	Amend	8-1-2010
461-155-0360(T)	1-1-2010	Repeal	2-1-2010	461-180-0085	1-1-2010	Amend	2-1-2010
461-155-0500	7-1-2010	Amend	8-1-2010	461-180-0085(T)	1-1-2010	Repeal	2-1-2010
461-155-0530	1-1-2010	Amend	2-1-2010	461-180-0090	1-1-2010	Amend	2-1-2010
461-155-0580	1-1-2010	Amend	2-1-2010	461-180-0090	1-1-2010	Amend(T)	2-1-2010
461-155-0630	1-1-2010	Amend	2-1-2010	461-180-0090	1-26-2010	Amend(T)	3-1-2010
461-155-0640	1-1-2010	Amend	2-1-2010	461-180-0090	7-1-2010	Amend	8-1-2010
461-155-0660	1-1-2010	Amend	2-1-2010	461-180-0090	7-1-2010	Amend(T)	8-1-2010
461-155-0670	1-1-2010	Amend	2-1-2010	461-180-0090(T)	1-1-2010	Repeal	2-1-2010
461-155-0680	1-1-2010	Amend	2-1-2010	461-180-0090(T)	1-26-2010	Suspend	3-1-2010
461-155-0688	1-1-2010	Adopt	2-1-2010	461-180-0120	7-1-2010	Amend	8-1-2010
461-155-0693	1-1-2010	Adopt	2-1-2010	461-190-0199	1-1-2010	Amend	2-1-2010
461-155-0693	7-1-2010	Amend	8-1-2010	461-193-0000	4-1-2010	Amend	5-1-2010
461-155-0693	7-1-2010	Amend(T)	8-1-2010	461-193-0031	1-1-2010	Amend	2-1-2010
461-155-0700	4-1-2010	Amend	5-1-2010	461-193-0042	4-1-2010	Amend	5-1-2010
461-160-0015	1-1-2010	Amend	2-1-2010	461-193-0121	1-1-2010	Repeal	2-1-2010
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461-160-0015	7-1-2010	Amend	8-1-2010	461-193-0240	5-17-2010	Amend(T)	7-1-2010
461-160-0015(T)	1-1-2010	Repeal	2-1-2010	461-193-0920	1-1-2010	Repeal	2-1-2010
461-160-0580	1-1-2010	Amend	2-1-2010	461-193-0980	1-1-2010	Repeal	2-1-2010
461-160-0610	1-1-2010	Amend	2-1-2010	461-193-1360	1-1-2010	Repeal	2-1-2010
461-160-0620	7-1-2010	Amend	8-1-2010	461-193-1370	1-1-2010	Repeal	2-1-2010

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461-195-0501	1-1-2010	Amend	2-1-2010	573-041-0040	4-22-2010	Repeal	6-1-2010
461-195-0511	1-1-2010	Repeal	2-1-2010	573-041-0045	1-11-2010	Repeal	2-1-2010
461-195-0521	1-1-2010	Amend	2-1-2010	573-041-0045	4-22-2010	Repeal	6-1-2010
461-195-0531	1-1-2010	Repeal	2-1-2010	573-041-0050	1-11-2010	Repeal	2-1-2010
461-195-0541	1-1-2010	Amend	2-1-2010	573-041-0050	4-22-2010	Repeal	6-1-2010
461-195-0551	1-1-2010	Amend	2-1-2010	573-041-0055	1-11-2010	Repeal	2-1-2010
461-195-0561	1-1-2010	Amend	2-1-2010	573-041-0055	4-22-2010	Repeal	6-1-2010
471-007-0200	1-31-2010	Adopt	3-1-2010	573-041-0060	1-11-2010	Repeal	2-1-2010
471-007-0200(T)	1-31-2010	Repeal	3-1-2010	573-041-0060	4-22-2010	Repeal	6-1-2010
471-007-0210	1-31-2010	Adopt	3-1-2010	573-041-0065	1-11-2010	Repeal	2-1-2010
471-007-0210(T)	1-31-2010	Repeal	3-1-2010	573-041-0065	4-22-2010	Repeal	6-1-2010
471-007-0220	1-31-2010	Adopt	3-1-2010	573-041-0085	1-11-2010	Repeal	2-1-2010
471-007-0220(T)	1-31-2010	Repeal	3-1-2010	573-041-0085	4-22-2010	Repeal	6-1-2010
471-007-0230	1-31-2010	Adopt	3-1-2010	573-041-0090	1-11-2010	Repeal	2-1-2010
471-007-0230(T)	1-31-2010	Repeal	3-1-2010	573-041-0090	4-22-2010	Repeal	6-1-2010
471-007-0240	1-31-2010	Adopt	3-1-2010	573-041-0095	1-11-2010	Repeal	2-1-2010
471-007-0240(T)	1-31-2010	Repeal	3-1-2010	573-041-0095	4-22-2010	Repeal	6-1-2010
471-007-0250	1-31-2010	Adopt	3-1-2010	573-041-0096	1-11-2010	Repeal	2-1-2010
471-007-0250(T)	1-31-2010	Repeal	3-1-2010	573-041-0096	4-22-2010	Repeal	6-1-2010
471-007-0260	1-31-2010	Adopt	3-1-2010	573-041-0100	1-11-2010	Repeal	2-1-2010
471-007-0260(T)	1-31-2010	Repeal	3-1-2010	573-041-0100	4-22-2010	Repeal	6-1-2010
471-007-0270	1-31-2010	Adopt	3-1-2010	573-050-0025	6-8-2010	Amend	7-1-2010
471-007-0270(T)	1-31-2010	Repeal	3-1-2010	573-050-0045	6-8-2010	Amend	7-1-2010
471-007-0280	1-31-2010	Adopt	3-1-2010	574-050-0005	1-27-2010	Amend	3-1-2010
471-007-0280(T)	1-31-2010	Repeal	3-1-2010	575-031-0025	11-24-2009	Amend(T)	1-1-2010
471-007-0285	1-31-2010	Adopt	3-1-2010	576-010-0000	7-1-2010	Amend	8-1-2010
471-007-0285(T)	1-31-2010	Repeal	3-1-2010	576-015-0005	7-1-2010	Amend	8-1-2010
471-007-0290	1-31-2010	Adopt	3-1-2010	576-015-0010	7-1-2010	Amend	8-1-2010
471-007-0290(T)	1-31-2010	Repeal	3-1-2010	576-015-0015	7-1-2010	Repeal	8-1-2010
471-007-0300	1-31-2010	Adopt	3-1-2010	576-015-0020	7-1-2010	Amend	8-1-2010
471-007-0300(T)	1-31-2010	Repeal	3-1-2010	576-015-0021	7-1-2010	Adopt	8-1-2010
471-007-0310	1-31-2010	Adopt	3-1-2010	576-015-0021	7-1-2010	Amend	8-1-2010
471-007-0310(T)	1-31-2010	Repeal	3-1-2010	576-015-0030	7-1-2010	Amend	8-1-2010
471-030-0220	4-14-2010	Adopt	5-1-2010	576-015-0035	7-1-2010	Amend	8-1-2010
471-030-0225	3-3-2010	Adopt(T)	4-1-2010	576-015-0040	7-1-2010	Amend	8-1-2010
571-060-0005	7-1-2010	Amend	6-1-2010	576-015-0043	7-1-2010	Amend	8-1-2010
573-040-0005	7-12-2010	Amend	8-1-2010	576-015-0045	7-1-2010	Amend	8-1-2010
573-041-0005	1-11-2010	Repeal	2-1-2010	576-015-0050	7-1-2010	Amend	8-1-2010
573-041-0005	4-22-2010	Repeal	6-1-2010	576-015-0055	7-1-2010	Amend	8-1-2010
573-041-0010	1-11-2010	Repeal	2-1-2010	576-015-0056	7-1-2010	Amend	8-1-2010
573-041-0010	4-22-2010	Repeal	6-1-2010	576-015-0057	7-1-2010	Amend	8-1-2010
573-041-0020	1-11-2010	Repeal	2-1-2010	576-015-0060	7-1-2010	Amend	8-1-2010
573-041-0020	4-22-2010	Repeal	6-1-2010	576-018-0000	7-1-2010	Repeal	8-1-2010
573-041-0025	1-11-2010	Repeal	2-1-2010	576-018-0010	7-1-2010	Repeal	8-1-2010
573-041-0025	4-22-2010	Repeal	6-1-2010	576-018-0020	7-1-2010	Repeal	8-1-2010
573-041-0027	1-11-2010	Repeal	2-1-2010	576-018-0030	7-1-2010	Repeal	8-1-2010
573-041-0027	4-22-2010	Repeal	6-1-2010	576-018-0040	7-1-2010	Repeal	8-1-2010
573-041-0030	1-11-2010	Repeal	2-1-2010	576-018-0050	7-1-2010	Repeal	8-1-2010
573-041-0030	4-22-2010	Repeal	6-1-2010	576-018-0060	7-1-2010	Repeal	8-1-2010
573-041-0035	1-11-2010	Repeal	2-1-2010	576-018-0070	7-1-2010	Repeal	8-1-2010
573-041-0035	4-22-2010	Repeal	6-1-2010	576-018-0080	7-1-2010	Repeal	8-1-2010
573-041-0036	1-11-2010	Repeal	2-1-2010	576-018-0090	7-1-2010	Repeal	8-1-2010
573-041-0036	4-22-2010	Repeal	6-1-2010	576-018-0100	7-1-2010	Repeal	8-1-2010
573-041-0037	1-11-2010	Repeal	2-1-2010	576-018-0110	7-1-2010	Repeal	8-1-2010
573-041-0037	4-22-2010	Repeal	6-1-2010	576-018-0120	7-1-2010	Repeal	8-1-2010

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576-018-0140	7-1-2010	Repeal	8-1-2010	581-016-1020	12-10-2009	Repeal	1-1-2010
576-018-0150	7-1-2010	Repeal	8-1-2010	581-016-1030	12-10-2009	Repeal	1-1-2010
576-018-0160	7-1-2010	Repeal	8-1-2010	581-016-1040	12-10-2009	Repeal	1-1-2010
576-018-0170	7-1-2010	Repeal	8-1-2010	581-016-1050	12-10-2009	Repeal	1-1-2010
576-018-0180	7-1-2010	Repeal	8-1-2010	581-020-0301	12-10-2009	Amend(T)	1-1-2010
576-018-0190	7-1-2010	Repeal	8-1-2010	581-020-0301	6-30-2010	Amend	8-1-2010
576-018-0200	7-1-2010	Repeal	8-1-2010	581-020-0333	12-10-2009	Adopt(T)	1-1-2010
576-018-0220	7-1-2010	Repeal	8-1-2010	581-020-0334	6-30-2010	Adopt	8-1-2010
576-018-0230	7-1-2010	Repeal	8-1-2010	581-020-0335	12-10-2009	Adopt(T)	1-1-2010
576-018-0240	7-1-2010	Repeal	8-1-2010	581-020-0336	6-30-2010	Adopt	8-1-2010
576-018-0250	7-1-2010	Repeal	8-1-2010	581-020-0337	12-10-2009	Adopt(T)	1-1-2010
576-018-0260	7-1-2010	Repeal	8-1-2010	581-020-0338	6-30-2010	Adopt	8-1-2010
577-060-0020	7-1-2010	Amend(T)	5-1-2010	581-020-0359	12-10-2009	Amend(T)	1-1-2010
577-060-0020	8-1-2010	Amend	8-1-2010	581-020-0359	6-30-2010	Amend	8-1-2010
577-060-0020(T)	8-1-2010	Repeal	8-1-2010	581-020-0362	12-10-2009	Adopt(T)	1-1-2010
578-041-0030	6-28-2010	Amend(T)	8-1-2010	581-020-0380	6-30-2010	Amend	8-1-2010
579-020-0006	12-15-2009	Amend	1-1-2010	581-021-0037	12-10-2009	Amend	1-1-2010
579-020-0006	5-13-2010	Amend	6-1-2010	581-021-0037	3-18-2010	Amend	5-1-2010
579-020-0006	7-15-2010	Amend	8-1-2010	581-021-0041	5-27-2010	Amend	7-1-2010
580-040-0035	1-19-2010	Amend	3-1-2010	581-021-0041	6-30-2010	Amend(T)	8-1-2010
580-040-0040	2-11-2010	Amend	3-1-2010	581-021-0110	12-10-2009	Amend	1-1-2010
580-040-0040	6-17-2010	Amend	8-1-2010	581-021-0500	12-10-2009	Amend	1-1-2010
580-040-0040(T)	2-11-2010	Repeal	3-1-2010	581-021-0500	12-10-2009	Amend	1-1-2010
581-001-0053	12-10-2009	Amend	1-1-2010	581-022-0421	6-30-2010	Adopt	8-1-2010
581-011-0087	2-8-2010	Amend	3-1-2010	581-022-0610	12-10-2009	Amend	1-1-2010
581-015-2000	12-10-2009	Amend	1-1-2010	581-022-0610	5-27-2010	Amend	7-1-2010
581-015-2090	12-10-2009	Amend	1-1-2010	581-022-0615	12-10-2009	Amend	1-1-2010
581-015-2270	12-10-2009	Amend	1-1-2010	581-022-0615(T)	12-10-2009	Repeal	1-1-2010
581-015-2275	12-10-2009	Amend	1-1-2010	581-022-0620	3-18-2010	Adopt	5-1-2010
581-015-2440	12-10-2009	Amend	1-1-2010	581-022-1130	12-10-2009	Amend	1-1-2010
581-015-2570	12-10-2009	Amend	1-1-2010	581-022-1133	12-10-2009	Adopt	1-1-2010
581-015-2571	12-10-2009	Adopt	1-1-2010	581-022-1134	12-10-2009	Amend	1-1-2010
581-015-2572	12-10-2009	Adopt	1-1-2010	581-022-1135	12-10-2009	Amend	1-1-2010
581-015-2573	12-10-2009	Adopt	1-1-2010	581-022-1215	12-10-2009	Adopt	1-1-2010
581-015-2574	12-10-2009	Adopt	1-1-2010	581-022-1440	12-10-2009	Amend	1-1-2010
581-015-2735	12-10-2009	Amend	1-1-2010	581-023-0006	12-10-2009	Amend	1-1-2010
581-016-0520	12-10-2009	Amend	1-1-2010	581-023-0018	12-10-2009	Amend	1-1-2010
581-016-0526	12-10-2009	Amend	1-1-2010	581-023-0040	4-26-2010	Amend	6-1-2010
581-016-0536	12-10-2009	Amend	1-1-2010	581-037-0005	6-30-2010	Amend	8-1-2010
581-016-0537	12-10-2009	Amend	1-1-2010	581-037-0006	6-30-2010	Amend	8-1-2010
581-016-0538	12-10-2009	Amend	1-1-2010	581-037-0015	6-30-2010	Amend	8-1-2010
581-016-0541	12-10-2009	Amend	1-1-2010	581-037-0025	6-30-2010	Amend	8-1-2010
581-016-0560	12-10-2009	Amend	1-1-2010	581-037-0030	6-30-2010	Repeal	8-1-2010
581-016-0890	12-10-2009	Repeal	1-1-2010	581-045-0001	2-8-2010	Amend	3-1-2010
581-016-0900	12-10-2009	Repeal	1-1-2010	581-045-0003	2-8-2010	Adopt	3-1-2010
581-016-0910	12-10-2009	Repeal	1-1-2010	581-045-0006	2-8-2010	Amend	3-1-2010
581-016-0920	12-10-2009	Repeal	1-1-2010	581-045-0062	2-8-2010	Amend	3-1-2010
581-016-0930	12-10-2009	Repeal	1-1-2010	581-045-0500	2-8-2010	Amend	3-1-2010
581-016-0940	12-10-2009	Repeal	1-1-2010	581-045-0522	12-10-2009	Amend	1-1-2010
581-016-0950	12-10-2009	Repeal	1-1-2010	581-045-0586	12-10-2009	Amend	1-1-2010
581-016-0960	12-10-2009	Repeal	1-1-2010	584-010-0020	12-15-2009	Amend	1-1-2010
581-016-0970	12-10-2009	Repeal	1-1-2010	584-017-0200	12-15-2009	Amend	1-1-2010
581-016-0980	12-10-2009	Repeal	1-1-2010	584-017-0201	12-15-2009	Amend	1-1-2010
581-016-0990	12-10-2009	Repeal	1-1-2010	584-020-0040	7-15-2010	Amend	8-1-2010
581-016-1000	12-10-2009	Repeal	1-1-2010	584-021-0165	12-15-2009	Amend	1-1-2010

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584-036-0081	12-15-2009	Amend	1-1-2010	603-011-0705	2-10-2010	Amend	3-1-2010
584-038-0300	12-15-2009	Amend	1-1-2010	603-011-0706	2-10-2010	Adopt	3-1-2010
584-042-0002	3-5-2010	Suspend	4-1-2010	603-011-0725	2-10-2010	Amend	3-1-2010
584-042-0006	3-5-2010	Suspend	4-1-2010	603-027-0410	1-1-2010	Amend	2-1-2010
584-042-0009	3-5-2010	Suspend	4-1-2010	603-027-0410(T)	1-1-2010	Repeal	2-1-2010
584-042-0021	3-5-2010	Adopt(T)	4-1-2010	603-027-0420	1-1-2010	Amend	2-1-2010
584-042-0021	7-15-2010	Adopt	8-1-2010	603-027-0420(T)	1-1-2010	Repeal	2-1-2010
584-042-0031	3-5-2010	Adopt(T)	4-1-2010	603-027-0430	1-1-2010	Amend	2-1-2010
584-042-0036	7-15-2010	Adopt	8-1-2010	603-027-0430(T)	1-1-2010	Repeal	2-1-2010
584-042-0044	3-5-2010	Adopt(T)	4-1-2010	603-027-0440	1-1-2010	Amend	2-1-2010
584-042-0044	7-15-2010	Adopt	8-1-2010	603-027-0440(T)	1-1-2010	Repeal	2-1-2010
584-042-0060	7-15-2010	Adopt	8-1-2010	603-027-0490	1-1-2010	Amend	2-1-2010
584-042-0070	7-15-2010	Adopt	8-1-2010	603-027-0490(T)	1-1-2010	Repeal	2-1-2010
584-042-0081	7-15-2010	Adopt	8-1-2010	603-052-0051	1-28-2010	Amend	3-1-2010
584-042-0090	7-15-2010	Adopt	8-1-2010	603-052-0127	1-28-2010	Amend	3-1-2010
584-044-0014	7-15-2010	Amend	8-1-2010	603-052-0860	1-21-2010	Amend	3-1-2010
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584-050-0006	12-15-2009	Amend	1-1-2010	603-052-1200	2-4-2010	Amend	3-1-2010
584-050-0015	4-2-2010	Amend	5-1-2010	603-052-1236	2-4-2010	Adopt	3-1-2010
584-050-0030	12-15-2009	Amend	1-1-2010	603-054-0024	1-28-2010	Amend	3-1-2010
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584-050-0100	4-2-2010	Amend	5-1-2010	603-056-0315	4-21-2010	Amend	6-1-2010
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584-060-0013	12-15-2009	Amend	1-1-2010	603-077-0101	7-12-2010	Amend	8-1-2010
584-060-0014	1-28-2010	Amend	3-1-2010	603-077-0103	7-12-2010	Amend	8-1-2010
584-060-0071	12-15-2009	Amend	1-1-2010	603-077-0105	7-12-2010	Amend	8-1-2010
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584-060-0171	12-15-2009	Amend	1-1-2010	603-077-0113	7-12-2010	Amend	8-1-2010
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584-060-0220	12-15-2009	Adopt	1-1-2010	603-077-0119	7-12-2010	Adopt	8-1-2010
584-065-0030	12-15-2009	Repeal	1-1-2010	603-077-0125	7-12-2010	Repeal	8-1-2010
584-065-0035	12-15-2009	Adopt	1-1-2010	603-077-0131	7-12-2010	Amend	8-1-2010
584-065-0040	12-15-2009	Repeal	1-1-2010	603-077-0133	7-12-2010	Amend	8-1-2010
584-070-0012	12-15-2009	Amend	1-1-2010	603-077-0135	7-12-2010	Amend	8-1-2010
584-070-0111	12-15-2009	Amend	1-1-2010	603-077-0137	7-12-2010	Amend	8-1-2010
584-070-0111	4-2-2010	Amend	5-1-2010	603-077-0139	7-12-2010	Adopt	8-1-2010
584-070-0112	12-15-2009	Amend	1-1-2010	603-077-0140	7-12-2010	Amend	8-1-2010
584-070-0310	12-15-2009	Amend	1-1-2010	603-077-0145	7-12-2010	Amend	8-1-2010
584-080-0012	7-15-2010	Amend	8-1-2010	603-077-0155	7-12-2010	Amend	8-1-2010
584-080-0022	12-15-2009	Amend	1-1-2010	603-077-0177	7-12-2010	Amend	8-1-2010
584-080-0151	12-15-2009	Amend	1-1-2010	607-010-0020	7-1-2010	Amend	7-1-2010
584-080-0152	12-15-2009	Amend	1-1-2010	609-010-0100	5-28-2010	Adopt	7-1-2010
584-080-0153	12-15-2009	Amend	1-1-2010	609-010-0110	5-28-2010	Adopt	7-1-2010
584-080-0153	4-2-2010	Amend	5-1-2010	609-010-0120	5-28-2010	Adopt	7-1-2010
584-080-0161	12-15-2009	Amend	1-1-2010	609-010-0130	5-28-2010	Adopt	7-1-2010
584-090-0050	4-2-2010	Repeal	5-1-2010	609-010-0140	5-28-2010	Adopt	7-1-2010
589-007-0700	12-14-2009	Adopt	1-1-2010	617-010-0085	6-21-2010	Amend	8-1-2010
603-010-0056	1-7-2010	Adopt	2-1-2010	617-040-0010	5-21-2010	Amend	7-1-2010
603-011-0610	2-26-2010	Amend	4-1-2010	629-035-0105	6-22-2010	Amend	8-1-2010
603-011-0615	2-26-2010	Amend	4-1-2010	629-045-0005	5-19-2010	Repeal	7-1-2010
603-011-0620	2-26-2010	Amend	4-1-2010	629-045-0010	5-19-2010	Repeal	7-1-2010

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629-045-0025	5-19-2010	Adopt	7-1-2010	635-004-0016(T)	4-1-2010	Repeal	5-1-2010
629-045-0030	5-19-2010	Adopt	7-1-2010	635-004-0017	6-12-2010	Amend(T)	7-1-2010
629-045-0035	5-19-2010	Adopt	7-1-2010	635-004-0019	3-3-2010	Amend(T)	4-1-2010
629-045-0040	5-19-2010	Adopt	7-1-2010	635-004-0019	5-12-2010	Amend(T)	6-1-2010
629-045-0045	5-19-2010	Adopt	7-1-2010	635-004-0019(T)	5-12-2010	Suspend	6-1-2010
629-045-0050	5-19-2010	Adopt	7-1-2010	635-004-0020	1-1-2010	Amend	2-1-2010
629-045-0055	5-19-2010	Adopt	7-1-2010	635-004-0027	1-1-2010	Amend(T)	2-1-2010
629-045-0060	5-19-2010	Adopt	7-1-2010	635-004-0033	1-1-2010	Amend	2-1-2010
629-045-0065	5-19-2010	Adopt	7-1-2010	635-004-0036	1-1-2010	Amend	2-1-2010
632-020-0005	6-22-2010	Amend	8-1-2010	635-004-0066	1-1-2010	Adopt	2-1-2010
632-020-0010	6-22-2010	Amend	8-1-2010	635-004-0068	1-1-2010	Adopt	2-1-2010
632-020-0015	6-22-2010	Amend	8-1-2010	635-004-0070	1-1-2010	Amend	2-1-2010
632-020-0020	6-22-2010	Amend	8-1-2010	635-004-0080	1-1-2010	Amend	2-1-2010
632-020-0030	6-22-2010	Amend	8-1-2010	635-005-0005	1-1-2010	Amend	2-1-2010
632-020-0031	6-22-2010	Amend	8-1-2010	635-006-0001	1-1-2010	Amend	1-1-2010
632-020-0040	6-22-2010	Amend	8-1-2010	635-006-0020	1-1-2010	Amend	1-1-2010
632-020-0045	6-22-2010	Amend	8-1-2010	635-006-0212	4-27-2010	Amend(T)	6-1-2010
632-020-0055	6-22-2010	Amend	8-1-2010	635-006-0215	4-1-2010	Amend(T)	5-1-2010
632-020-0060	6-22-2010	Amend	8-1-2010	635-006-0215	4-27-2010	Amend(T)	6-1-2010
632-020-0065	6-22-2010	Amend	8-1-2010	635-006-0215(T)	4-27-2010	Suspend	6-1-2010
632-020-0070	6-22-2010	Amend	8-1-2010	635-006-0225	4-27-2010	Amend(T)	6-1-2010
632-020-0090	6-22-2010	Amend	8-1-2010	635-006-0232	1-13-2010	Amend	2-1-2010
632-020-0095	6-22-2010	Amend	8-1-2010	635-006-0850	1-1-2010	Amend	2-1-2010
632-020-0100	6-22-2010	Amend	8-1-2010	635-006-0890	1-1-2010	Amend	2-1-2010
632-020-0105	6-22-2010	Amend	8-1-2010	635-006-0910	1-1-2010	Amend	1-1-2010
632-020-0110	6-22-2010	Amend	8-1-2010	635-006-1025	1-1-2010	Amend	1-1-2010
632-020-0115	6-22-2010	Amend	8-1-2010	635-006-1075	1-1-2010	Amend	1-1-2010
632-020-0117	6-22-2010	Amend	8-1-2010	635-006-1085	1-1-2010	Amend	1-1-2010
632-020-0120	6-22-2010	Amend	8-1-2010	635-007-0605	1-1-2010	Amend	1-1-2010
632-020-0125	6-22-2010	Amend	8-1-2010	635-007-0910	1-1-2010	Amend	1-1-2010
632-020-0130	6-22-2010	Amend	8-1-2010	635-008-0145	1-1-2010	Amend	1-1-2010
632-020-0135	6-22-2010	Amend	8-1-2010	635-011-0100	1-1-2010	Amend	1-1-2010
632-020-0138	6-22-2010	Amend	8-1-2010	635-011-0170	3-15-2010	Adopt	4-1-2010
632-020-0145	6-22-2010	Amend	8-1-2010	635-012-0020	6-30-2011	Adopt	2-1-2010
632-020-0150	6-22-2010	Amend	8-1-2010	635-012-0020	6-30-2011	Adopt	3-1-2010
632-020-0151	6-22-2010	Amend	8-1-2010	635-012-0030	6-30-2011	Adopt	2-1-2010
632-020-0154	6-22-2010	Amend	8-1-2010	635-012-0030	6-30-2011	Adopt	3-1-2010
632-020-0155	6-22-2010	Amend	8-1-2010	635-012-0040	6-30-2011	Adopt	2-1-2010
632-020-0156	6-22-2010	Amend	8-1-2010	635-012-0050	6-30-2011	Adopt	2-1-2010
632-020-0157	6-22-2010	Amend	8-1-2010	635-012-0050	6-30-2011	Adopt	3-1-2010
632-020-0158	6-22-2010	Amend	8-1-2010	635-012-0060	6-30-2011	Adopt	2-1-2010
632-020-0170	6-22-2010	Amend	8-1-2010	635-012-0060	6-30-2011	Adopt	3-1-2010
632-020-0175	6-22-2010	Amend	8-1-2010	635-013-0003	1-1-2010	Amend	1-1-2010
632-020-0180	6-22-2010	Amend	8-1-2010	635-013-0003	5-25-2010	Amend	7-1-2010
635-001-0035	1-1-2010	Amend	2-1-2010	635-013-0004	1-1-2010	Amend	1-1-2010
635-001-0410	7-1-2010	Adopt(T)	8-1-2010	635-013-0007	8-1-2010	Amend	7-1-2010
635-002-0014	5-17-2010	Adopt	7-1-2010	635-013-0009	3-15-2010	Amend(T)	4-1-2010
635-003-0003	5-25-2010	Amend	7-1-2010	635-013-0009	8-1-2010	Amend	7-1-2010
635-003-0085	8-1-2010	Amend	7-1-2010	635-013-0009(T)	8-1-2010	Repeal	7-1-2010
635-004-0005	3-15-2010	Amend	4-1-2010	635-014-0080	1-1-2010	Amend	1-1-2010
635-004-0005	4-1-2010	Amend	5-1-2010	635-014-0090	1-1-2010	Amend	1-1-2010
635-004-0009	3-15-2010	Amend	4-1-2010	635-014-0090	4-21-2010	Amend(T)	6-1-2010
635-004-0009	4-1-2010	Amend	5-1-2010	635-014-0090	6-1-2010	Amend(T)	7-1-2010
635-004-0016	1-1-2010	Amend(T)	2-1-2010	635-014-0090	7-1-2010	Amend(T)	8-1-2010
635-004-0016	3-15-2010	Amend	4-1-2010	635-014-0090	8-1-2010	Amend	7-1-2010

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635-014-0090(T)	7-1-2010	Suspend	8-1-2010	635-023-0095	8-1-2010	Amend(T)	8-1-2010
635-016-0080	1-1-2010	Amend	1-1-2010	635-023-0095(T)	3-1-2010	Suspend	4-1-2010
635-016-0090	11-19-2009	Amend(T)	1-1-2010	635-023-0095(T)	4-1-2010	Repeal	5-1-2010
635-016-0090	1-1-2010	Amend	1-1-2010	635-023-0095(T)	5-6-2010	Suspend	6-1-2010
635-016-0090	5-22-2010	Amend(T)	7-1-2010	635-023-0095(T)	6-26-2010	Suspend	8-1-2010
635-016-0090	8-1-2010	Amend	7-1-2010	635-023-0095(T)	7-15-2010	Suspend	8-1-2010
635-016-0090(T)	11-19-2009	Suspend	1-1-2010	635-023-0095(T)	8-1-2010	Suspend	8-1-2010
635-017-0080	1-1-2010	Amend	1-1-2010	635-023-0125	1-1-2010	Amend	1-1-2010
635-017-0090	1-1-2010	Amend	1-1-2010	635-023-0125	3-1-2010	Amend(T)	4-1-2010
635-017-0090	5-14-2010	Amend	6-1-2010	635-023-0125	3-2-2010	Amend(T)	4-1-2010
635-017-0090	5-22-2010	Amend(T)	6-1-2010	635-023-0125	4-24-2010	Amend(T)	6-1-2010
635-017-0090	6-18-2010	Amend(T)	8-1-2010	635-023-0125	4-29-2010	Amend(T)	6-1-2010
635-017-0090	7-1-2010	Amend(T)	8-1-2010	635-023-0125	5-8-2010	Amend(T)	6-1-2010
635-017-0090	7-8-2010	Amend(T)	8-1-2010	635-023-0125(T)	3-2-2010	Suspend	4-1-2010
635-017-0090(T)	6-18-2010	Suspend	8-1-2010	635-023-0125(T)	4-24-2010	Suspend	6-1-2010
635-017-0090(T)	7-1-2010	Suspend	8-1-2010	635-023-0125(T)	4-29-2010	Suspend	6-1-2010
635-017-0090(T)	7-8-2010	Suspend	8-1-2010	635-023-0125(T)	5-8-2010	Suspend	6-1-2010
635-017-0095	1-1-2010	Amend	1-1-2010	635-023-0125(T)	6-26-2010	Suspend	8-1-2010
635-017-0095	4-1-2010	Amend	5-1-2010	635-023-0128	1-1-2010	Amend	1-1-2010
635-017-0095	7-5-2010	Amend(T)	8-1-2010	635-023-0128	6-16-2010	Amend	7-1-2010
635-018-0080	1-1-2010	Amend	1-1-2010	635-023-0128	6-26-2010	Amend(T)	8-1-2010
635-018-0090	1-1-2010	Amend	1-1-2010	635-023-0130	1-1-2010	Amend	1-1-2010
635-018-0090	4-1-2010	Amend(T)	3-1-2010	635-023-0130	6-16-2010	Amend	7-1-2010
635-018-0090	4-15-2010	Amend(T)	4-1-2010	635-023-0134	1-1-2010	Amend	1-1-2010
635-018-0090	5-22-2010	Amend(T)	7-1-2010	635-023-0134	4-24-2010	Amend(T)	5-1-2010
635-018-0090	7-1-2010	Amend(T)	8-1-2010	635-039-0080	1-1-2010	Amend	1-1-2010
635-018-0090(T)	4-15-2010	Suspend	4-1-2010	635-039-0080	3-15-2010	Amend	4-1-2010
635-018-0090(T)	5-22-2010	Suspend	7-1-2010	635-039-0080	4-1-2010	Amend	5-1-2010
635-018-0090(T)	7-1-2010	Suspend	8-1-2010	635-039-0085	3-15-2010	Amend	4-1-2010
635-019-0080	1-1-2010	Amend	1-1-2010	635-039-0085	4-1-2010	Amend	5-1-2010
635-019-0090	1-1-2010	Amend	1-1-2010	635-039-0085	7-17-2010	Amend(T)	8-1-2010
635-019-0090	5-22-2010	Amend(T)	6-1-2010	635-039-0090	1-1-2010	Amend	1-1-2010
635-019-0090	7-11-2010	Amend(T)	8-1-2010	635-041-0005	4-15-2010	Amend(T)	5-1-2010
635-019-0090(T)	7-11-2010	Suspend	8-1-2010	635-041-0015	4-15-2010	Amend(T)	5-1-2010
635-021-0080	1-1-2010	Amend	1-1-2010	635-041-0020	4-15-2010	Amend(T)	5-1-2010
635-021-0090	1-1-2010	Amend	1-1-2010	635-041-0025	4-15-2010	Amend(T)	5-1-2010
635-021-0090	5-1-2010	Amend(T)	6-1-2010	635-041-0065	2-3-2010	Amend(T)	3-1-2010
635-021-0090	5-22-2010	Amend(T)	6-1-2010	635-041-0065	2-11-2010	Amend(T)	3-1-2010
635-021-0090	5-22-2010	Amend(T)	7-1-2010	635-041-0065	2-26-2010	Amend(T)	4-1-2010
635-021-0090	6-11-2010	Amend(T)	7-1-2010	635-041-0065	3-3-2010	Amend(T)	4-1-2010
635-021-0090(T)	5-22-2010	Suspend	7-1-2010	635-041-0065(T)	2-11-2010	Suspend	3-1-2010
635-021-0090(T)	5-22-2010	Suspend	7-1-2010	635-041-0065(T)	2-26-2010	Suspend	4-1-2010
635-021-0090(T)	6-11-2010	Suspend	7-1-2010	635-041-0065(T)	3-3-2010	Suspend	4-1-2010
635-023-0080	1-1-2010	Amend	1-1-2010	635-041-0076	4-27-2010	Amend(T)	6-1-2010
635-023-0090	1-1-2010	Amend	1-1-2010	635-041-0076	4-29-2010	Amend(T)	6-1-2010
635-023-0090	1-1-2010	Amend(T)	2-1-2010	635-041-0076	5-11-2010	Amend(T)	6-1-2010
635-023-0090	3-11-2010	Amend(T)	4-1-2010	635-041-0076	5-19-2010	Amend(T)	7-1-2010
635-023-0090(T)	3-11-2010	Suspend	4-1-2010	635-041-0076	5-21-2010	Amend(T)	7-1-2010
635-023-0095	1-1-2010	Amend	1-1-2010	635-041-0076	6-2-2010	Amend(T)	7-1-2010
635-023-0095	2-21-2010	Amend(T)	4-1-2010	635-041-0076	6-16-2010	Amend(T)	7-1-2010
635-023-0095	3-1-2010	Amend(T)	4-1-2010	635-041-0076	6-29-2010	Amend(T)	8-1-2010
635-023-0095	4-1-2010	Amend	5-1-2010	635-041-0076	7-13-2010	Amend(T)	8-1-2010
635-023-0095	4-29-2010	Amend(T)	6-1-2010	635-041-0076(T)	4-29-2010	Suspend	6-1-2010
635-023-0095	5-6-2010	Amend(T)	6-1-2010	635-041-0076(T)	5-11-2010	Suspend	6-1-2010
635-023-0095	6-26-2010	Amend(T)	8-1-2010	635-041-0076(T)	5-19-2010	Suspend	7-1-2010

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635-041-0076(T)	6-2-2010	Suspend	7-1-2010	635-042-0180(T)	4-1-2010	Suspend	5-1-2010
635-041-0076(T)	6-16-2010	Suspend	7-1-2010	635-042-0180(T)	4-21-2010	Suspend	6-1-2010
635-041-0076(T)	6-29-2010	Suspend	8-1-2010	635-042-0180(T)	5-4-2010	Suspend	6-1-2010
635-041-0076(T)	7-13-2010	Suspend	8-1-2010	635-042-0180(T)	5-11-2010	Suspend	6-1-2010
635-042-0022	3-30-2010	Amend(T)	5-1-2010	635-042-0180(T)	5-18-2010	Suspend	7-1-2010
635-042-0022	4-7-2010	Amend(T)	5-1-2010	635-043-0051	6-2-2010	Amend(T)	7-1-2010
635-042-0022(T)	4-7-2010	Suspend	5-1-2010	635-043-0051	7-9-2010	Amend(T)	8-1-2010
635-042-0027	6-17-2010	Amend(T)	7-1-2010	635-043-0051(T)	7-9-2010	Suspend	8-1-2010
635-042-0110	4-1-2010	Amend	5-1-2010	635-043-0105	1-12-2010	Amend	2-1-2010
635-042-0130	1-1-2010	Amend(T)	2-1-2010	635-044-0051	1-1-2010	Adopt(T)	2-1-2010
635-042-0130	2-8-2010	Amend(T)	3-1-2010	635-044-0051	5-17-2010	Adopt	7-1-2010
635-042-0130	3-11-2010	Amend(T)	4-1-2010	635-044-0051(T)	5-17-2010	Repeal	7-1-2010
635-042-0130(T)	2-8-2010	Suspend	3-1-2010	635-048-0080	12-15-2009	Amend	1-1-2010
635-042-0130(T)	3-11-2010	Suspend	4-1-2010	635-050-0045	6-15-2010	Amend	7-1-2010
635-042-0135	1-1-2010	Amend(T)	2-1-2010	635-050-0050	6-15-2010	Amend	7-1-2010
635-042-0145	2-22-2010	Amend(T)	4-1-2010	635-050-0070	6-15-2010	Amend	7-1-2010
635-042-0145	2-26-2010	Amend(T)	4-1-2010	635-050-0080	6-15-2010	Amend	7-1-2010
635-042-0145	3-14-2010	Amend(T)	4-1-2010	635-050-0090	6-15-2010	Amend	7-1-2010
635-042-0145	3-24-2010	Amend(T)	5-1-2010	635-050-0100	6-15-2010	Amend	7-1-2010
635-042-0145	4-1-2010	Amend(T)	5-1-2010	635-050-0110	6-15-2010	Amend	7-1-2010
635-042-0145	4-21-2010	Amend(T)	6-1-2010	635-050-0120	6-15-2010	Amend	7-1-2010
635-042-0145	5-4-2010	Amend(T)	6-1-2010	635-050-0130	6-15-2010	Amend	7-1-2010
635-042-0145	5-11-2010	Amend(T)	6-1-2010	635-050-0140	6-15-2010	Amend	7-1-2010
635-042-0145	5-18-2010	Amend(T)	7-1-2010	635-050-0150	6-15-2010	Amend	7-1-2010
635-042-0145(T)	2-26-2010	Suspend	4-1-2010	635-050-0170	6-15-2010	Amend	7-1-2010
635-042-0145(T)	3-14-2010	Suspend	4-1-2010	635-050-0183	6-15-2010	Amend	7-1-2010
635-042-0145(T)	3-24-2010	Suspend	5-1-2010	635-050-0189	6-15-2010	Amend	7-1-2010
635-042-0145(T)	4-1-2010	Suspend	5-1-2010	635-055-0000	12-15-2009	Amend	1-1-2010
635-042-0145(T)	4-21-2010	Suspend	6-1-2010	635-055-0035	12-15-2009	Amend	1-1-2010
635-042-0145(T)	5-4-2010	Suspend	6-1-2010	635-055-0037	12-15-2009	Amend	1-1-2010
635-042-0145(T)	5-11-2010	Suspend	6-1-2010	635-055-0070	12-15-2009	Amend	1-1-2010
635-042-0145(T)	5-18-2010	Suspend	7-1-2010	635-058-0000	1-12-2010	Adopt	2-1-2010
635-042-0160	2-21-2010	Amend(T)	4-1-2010	635-058-0010	1-12-2010	Adopt	2-1-2010
635-042-0160	4-21-2010	Amend(T)	6-1-2010	635-058-0020	1-12-2010	Adopt	2-1-2010
635-042-0160	5-4-2010	Amend(T)	6-1-2010	635-059-0000	1-12-2010	Adopt	2-1-2010
635-042-0160	5-11-2010	Amend(T)	6-1-2010	635-059-0010	1-12-2010	Adopt	2-1-2010
635-042-0160	5-18-2010	Amend(T)	7-1-2010	635-059-0050	1-12-2010	Adopt	2-1-2010
635-042-0160(T)	4-21-2010	Suspend	6-1-2010	635-060-0030	5-12-2010	Amend(T)	6-1-2010
635-042-0160(T)	5-4-2010	Suspend	6-1-2010	635-065-0015	3-3-2010	Amend(T)	4-1-2010
635-042-0160(T)	5-11-2010	Suspend	6-1-2010	635-065-0015	5-12-2010	Amend(T)	6-1-2010
635-042-0160(T)	5-18-2010	Suspend	7-1-2010	635-065-0015	5-18-2010	Amend(T)	7-1-2010
635-042-0170	4-19-2010	Amend(T)	4-1-2010	635-065-0015	6-15-2010	Amend	7-1-2010
635-042-0170	4-21-2010	Amend(T)	6-1-2010	635-065-0015(T)	5-12-2010	Suspend	6-1-2010
635-042-0170	5-4-2010	Amend(T)	6-1-2010	635-065-0015(T)	5-18-2010	Suspend	7-1-2010
635-042-0170	5-11-2010	Amend(T)	6-1-2010	635-065-0015(T)	6-15-2010	Repeal	7-1-2010
635-042-0170	5-18-2010	Amend(T)	7-1-2010	635-065-0765	1-25-2010	Amend(T)	3-1-2010
635-042-0170(T)	4-21-2010	Suspend	6-1-2010	635-065-0765	2-26-2010	Amend(T)	4-1-2010
635-042-0170(T)	5-4-2010	Suspend	6-1-2010	635-065-0765	3-30-2010	Amend(T)	5-1-2010
635-042-0170(T)	5-11-2010	Suspend	6-1-2010	635-065-0765	6-15-2010	Amend	7-1-2010
635-042-0170(T)	5-18-2010	Suspend	7-1-2010	635-065-0765(T)	6-15-2010	Repeal	7-1-2010
635-042-0180	2-22-2010	Amend(T)	4-1-2010	635-067-0000	6-15-2010	Amend	7-1-2010
635-042-0180	4-1-2010	Amend(T)	5-1-2010	635-067-0000	6-21-2010	Amend(T)	8-1-2010
635-042-0180	4-21-2010	Amend(T)	6-1-2010	635-067-0016	6-15-2010	Repeal	7-1-2010
635-042-0180	5-4-2010	Amend(T)	6-1-2010	635-068-0000	3-1-2010	Amend	4-1-2010
635-042-0180	5-11-2010	Amend(T)	6-1-2010	635-068-0000	6-15-2010	Amend	7-1-2010

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635-069-0000	6-15-2010	Amend	7-1-2010	661-010-0025	7-1-2010	Amend	8-1-2010
635-070-0000	4-1-2010	Amend	4-1-2010	661-010-0026	7-1-2010	Amend	8-1-2010
635-070-0000	4-1-2010	Amend	4-1-2010	661-010-0030	7-1-2010	Amend	8-1-2010
635-070-0000	6-15-2010	Amend	7-1-2010	661-010-0035	7-1-2010	Amend	8-1-2010
635-071-0000	4-1-2010	Amend	4-1-2010	661-010-0038	1-1-2010	Amend	2-1-2010
635-071-0000	4-1-2010	Amend	4-1-2010	661-010-0039	7-1-2010	Amend	8-1-2010
635-071-0000	6-15-2010	Amend	7-1-2010	661-010-0040	7-1-2010	Amend	8-1-2010
635-073-0000	2-1-2010	Amend	2-1-2010	661-010-0050	1-1-2010	Amend	2-1-2010
635-073-0000	6-15-2010	Amend	7-1-2010	661-010-0050	7-1-2010	Amend	8-1-2010
635-073-0065	2-1-2010	Amend	2-1-2010	661-010-0052	7-1-2010	Amend	8-1-2010
635-073-0070	2-1-2010	Amend	2-1-2010	661-010-0055	7-1-2010	Amend	8-1-2010
635-073-0076	6-15-2010	Adopt	7-1-2010	661-010-0065	7-1-2010	Amend	8-1-2010
635-075-0020	6-15-2010	Amend	7-1-2010	661-010-0067	7-1-2010	Amend	8-1-2010
635-090-0030	1-1-2010	Amend	1-1-2010	661-010-0075	7-1-2010	Amend	8-1-2010
635-090-0050	1-1-2010	Amend	1-1-2010	661-040-0045	7-1-2010	Amend	8-1-2010
635-110-0010	6-29-2010	Amend(T)	8-1-2010	678-010-0050	7-15-2010	Amend	8-1-2010
635-200-0030	6-15-2010	Amend	7-1-2010	678-030-0000	7-15-2010	Amend	8-1-2010
635-500-0703	1-1-2010	Amend	2-1-2010	678-030-0010	7-15-2010	Amend	8-1-2010
635-500-6550	2-8-2010	Adopt	3-1-2010	678-030-0020	7-15-2010	Amend	8-1-2010
635-600-0000	1-1-2010	Amend	1-1-2010	678-030-0025	7-15-2010	Adopt	8-1-2010
635-600-0005	1-1-2010	Amend	1-1-2010	678-030-0027	7-15-2010	Adopt	8-1-2010
635-600-0010	1-1-2010	Amend	1-1-2010	678-030-0030	7-15-2010	Amend	8-1-2010
635-600-0030	1-1-2010	Amend	1-1-2010	690-020-0021	1-1-2010	Am. & Ren.	1-1-2010
635-600-0040	1-1-2010	Amend	1-1-2010	690-020-0022	1-1-2010	Amend	1-1-2010
641-010-0005	7-1-2010	Amend	7-1-2010	690-020-0025	1-1-2010	Amend	1-1-2010
642-010-0010	7-1-2010	Amend	7-1-2010	690-020-0029	1-1-2010	Amend	1-1-2010
645-010-0015	2-23-2010	Amend(T)	4-1-2010	690-020-0035	1-1-2010	Amend	1-1-2010
647-010-0010	7-1-2010	Amend	6-1-2010	690-020-0039	1-1-2010	Am. & Ren.	1-1-2010
658-040-0005	7-1-2010	Amend	8-1-2010	690-020-0100	1-1-2010	Adopt	1-1-2010
660-027-0070	4-30-2010	Amend	6-1-2010	690-020-0200	1-1-2010	Adopt	1-1-2010
660-028-0010	1-28-2010	Adopt	3-1-2010	690-180-0005	11-23-2009	Suspend	1-1-2010
660-028-0020	1-28-2010	Adopt	3-1-2010	690-180-0010	11-23-2009	Suspend	1-1-2010
660-028-0030	1-28-2010	Adopt	3-1-2010	690-180-0100	11-23-2009	Suspend	1-1-2010
660-033-0120	12-7-2009	Amend	1-1-2010	690-180-0200	11-23-2009	Suspend	1-1-2010
660-033-0120	6-17-2010	Amend	8-1-2010	690-190-0005	11-23-2009	Adopt	1-1-2010
660-033-0130	12-7-2009	Amend	1-1-2010	690-190-0010	11-23-2009	Adopt	1-1-2010
660-033-0130	6-17-2010	Amend	8-1-2010	690-190-0100	11-23-2009	Adopt	1-1-2010
660-033-0130	6-17-2010	Amend(T)	8-1-2010	690-190-0200	11-23-2009	Adopt	1-1-2010
660-036-0005	11-25-2009	Adopt	1-1-2010	690-340-0030	12-15-2009	Amend	1-1-2010
660-041-0000	2-9-2010	Amend	3-1-2010	690-382-0400	12-15-2009	Amend	1-1-2010
660-041-0000	5-7-2010	Amend(T)	6-1-2010	690-522-0010	6-9-2010	Adopt	7-1-2010
660-041-0010	5-7-2010	Amend(T)	6-1-2010	690-522-0020	6-9-2010	Adopt	7-1-2010
660-041-0020	2-9-2010	Amend	3-1-2010	690-522-0030	6-9-2010	Adopt	7-1-2010
660-041-0080	2-9-2010	Amend	3-1-2010	690-522-0040	6-9-2010	Adopt	7-1-2010
660-041-0080	5-7-2010	Amend(T)	6-1-2010	690-522-0050	6-9-2010	Adopt	7-1-2010
660-041-0090	5-7-2010	Amend(T)	6-1-2010	731-005-0410	1-1-2010	Amend(T)	2-1-2010
660-041-0105	5-7-2010	Adopt(T)	6-1-2010	731-005-0410	5-18-2010	Amend	7-1-2010
660-041-0110	5-7-2010	Amend(T)	6-1-2010	731-005-0410(T)	5-18-2010	Repeal	7-1-2010
660-041-0120	5-7-2010	Amend(T)	6-1-2010	731-005-0470	1-1-2010	Amend(T)	2-1-2010
660-041-0170	5-7-2010	Amend(T)	6-1-2010	731-005-0470	5-18-2010	Amend	7-1-2010
660-043-0100	5-13-2010	Adopt	6-1-2010	731-005-0470(T)	5-18-2010	Repeal	7-1-2010
661-001-0000	7-1-2010	Amend	8-1-2010	731-005-0670	1-1-2010	Amend(T)	2-1-2010
661-010-0000	7-1-2010	Amend	8-1-2010	731-005-0670	5-18-2010	Amend	7-1-2010
661-010-0015	1-1-2010	Amend	2-1-2010	731-005-0670(T)	5-18-2010	Repeal	7-1-2010
661-010-0015	7-1-2010	Amend	8-1-2010	731-007-0210	1-1-2010	Amend(T)	2-1-2010

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731-007-0260	1-1-2010	Amend(T)	2-1-2010	732-005-0016	1-29-2010	Amend	3-1-2010
731-007-0260	5-18-2010	Amend	7-1-2010	732-005-0016(T)	1-29-2010	Repeal	3-1-2010
731-007-0260(T)	5-18-2010	Repeal	7-1-2010	732-005-0021	1-29-2010	Amend	3-1-2010
731-007-0290	1-1-2010	Amend(T)	2-1-2010	732-005-0021(T)	1-29-2010	Repeal	3-1-2010
731-007-0290	5-18-2010	Amend	7-1-2010	732-005-0027	1-29-2010	Amend	3-1-2010
731-007-0290(T)	5-18-2010	Repeal	7-1-2010	732-005-0027(T)	1-29-2010	Repeal	3-1-2010
731-035-0020	11-17-2009	Amend	1-1-2010	732-005-0031	1-29-2010	Amend	3-1-2010
731-035-0050	11-17-2009	Amend	1-1-2010	732-005-0031(T)	1-29-2010	Repeal	3-1-2010
731-035-0060	11-17-2009	Amend	1-1-2010	732-005-0036	1-29-2010	Amend	3-1-2010
731-035-0070	11-17-2009	Amend	1-1-2010	732-005-0036(T)	1-29-2010	Repeal	3-1-2010
731-070-0010	12-22-2009	Amend	2-1-2010	732-005-0046	1-29-2010	Amend	3-1-2010
731-070-0020	12-22-2009	Amend	2-1-2010	732-005-0046(T)	1-29-2010	Repeal	3-1-2010
731-070-0030	12-22-2009	Amend	2-1-2010	732-005-0051	1-29-2010	Amend	3-1-2010
731-070-0050	12-22-2009	Amend	2-1-2010	732-005-0051(T)	1-29-2010	Repeal	3-1-2010
731-070-0055	12-22-2009	Amend	2-1-2010	732-005-0056	1-29-2010	Amend	3-1-2010
731-070-0060	12-22-2009	Amend	2-1-2010	732-005-0056(T)	1-29-2010	Repeal	3-1-2010
731-070-0070	12-22-2009	Am. & Ren.	2-1-2010	732-005-0061	1-29-2010	Amend	3-1-2010
731-070-0080	12-22-2009	Amend	2-1-2010	732-005-0061(T)	1-29-2010	Repeal	3-1-2010
731-070-0110	12-22-2009	Amend	2-1-2010	732-005-0066	1-29-2010	Amend	3-1-2010
731-070-0120	12-22-2009	Amend	2-1-2010	732-005-0066(T)	1-29-2010	Repeal	3-1-2010
731-070-0130	12-22-2009	Amend	2-1-2010	732-005-0076	1-29-2010	Amend	3-1-2010
731-070-0140	12-22-2009	Amend	2-1-2010	732-005-0076(T)	1-29-2010	Repeal	3-1-2010
731-070-0160	12-22-2009	Amend	2-1-2010	732-005-0081	1-29-2010	Amend	3-1-2010
731-070-0170	12-22-2009	Amend	2-1-2010	732-005-0081(T)	1-29-2010	Repeal	3-1-2010
731-070-0180	12-22-2009	Amend	2-1-2010	732-030-0005	1-29-2010	Adopt	3-1-2010
731-070-0190	12-22-2009	Amend	2-1-2010	732-030-0005(T)	1-29-2010	Repeal	3-1-2010
731-070-0200	12-22-2009	Amend	2-1-2010	732-030-0010	1-29-2010	Adopt	3-1-2010
731-070-0210	12-22-2009	Amend	2-1-2010	732-030-0010(T)	1-29-2010	Repeal	3-1-2010
731-070-0220	12-22-2009	Amend	2-1-2010	732-030-0015	1-29-2010	Adopt	3-1-2010
731-070-0240	12-22-2009	Amend	2-1-2010	732-030-0015(T)	1-29-2010	Repeal	3-1-2010
731-070-0245	12-22-2009	Adopt	2-1-2010	732-030-0020	1-29-2010	Adopt	3-1-2010
731-070-0250	12-22-2009	Amend	2-1-2010	732-030-0020(T)	1-29-2010	Repeal	3-1-2010
731-070-0260	12-22-2009	Amend	2-1-2010	732-030-0025	1-29-2010	Adopt	3-1-2010
731-070-0270	12-22-2009	Repeal	2-1-2010	732-030-0025(T)	1-29-2010	Repeal	3-1-2010
731-070-0280	12-22-2009	Amend	2-1-2010	732-030-0030	1-29-2010	Adopt	3-1-2010
731-070-0295	12-22-2009	Amend	2-1-2010	732-030-0030(T)	1-29-2010	Repeal	3-1-2010
731-070-0300	12-22-2009	Amend	2-1-2010	732-030-0035	1-29-2010	Adopt	3-1-2010
731-070-0320	12-22-2009	Amend	2-1-2010	732-030-0035(T)	1-29-2010	Repeal	3-1-2010
731-070-0350	12-22-2009	Amend	2-1-2010	733-030-0011	6-11-2010	Amend	7-1-2010
731-070-0360	12-22-2009	Amend	2-1-2010	733-030-0021	6-11-2010	Amend	7-1-2010
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731-146-0010	5-18-2010	Amend	7-1-2010	733-030-0055	6-11-2010	Amend	7-1-2010
731-146-0010(T)	5-18-2010	Repeal	7-1-2010	733-030-0080	6-11-2010	Amend	7-1-2010
731-147-0010	1-1-2010	Amend(T)	2-1-2010	733-030-0500	3-15-2010	Adopt	4-1-2010
731-147-0010	5-18-2010	Amend	7-1-2010	733-030-0510	3-15-2010	Adopt	4-1-2010
731-147-0010(T)	5-18-2010	Repeal	7-1-2010	733-030-0520	3-15-2010	Adopt	4-1-2010
731-148-0010	1-1-2010	Amend(T)	2-1-2010	734-020-0148	1-28-2010	Adopt(T)	3-1-2010
731-148-0010	5-18-2010	Amend	7-1-2010	734-020-0148	5-18-2010	Amend	7-1-2010
731-148-0010(T)	5-18-2010	Repeal	7-1-2010	734-020-0148(T)	5-18-2010	Repeal	7-1-2010
731-149-0010	1-1-2010	Amend(T)	2-1-2010	734-029-0005	7-1-2010	Amend	8-1-2010
731-149-0010	5-18-2010	Amend	7-1-2010	734-029-0010	7-1-2010	Amend	8-1-2010
731-149-0010(T)	5-18-2010	Repeal	7-1-2010	734-029-0020	7-1-2010	Amend	8-1-2010
732-005-0000	1-29-2010	Amend	3-1-2010	734-029-0030	7-1-2010	Amend	8-1-2010
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734-030-0010	4-28-2010	Amend(T)	6-1-2010	735-062-0090	1-1-2010	Amend	2-1-2010
734-030-0015	4-28-2010	Amend(T)	6-1-2010	735-062-0125	1-1-2010	Amend	2-1-2010
734-030-0020	4-28-2010	Amend(T)	6-1-2010	735-062-0190	1-1-2010	Amend	2-1-2010
734-035-0150	6-16-2010	Adopt	8-1-2010	735-062-0290	1-28-2010	Adopt	3-1-2010
734-065-0005	11-17-2009	Repeal	1-1-2010	735-063-0000	3-17-2010	Amend	5-1-2010
734-065-0010	11-17-2009	Amend	1-1-2010	735-063-0050	3-17-2010	Amend	5-1-2010
734-065-0015	11-17-2009	Amend	1-1-2010	735-063-0060	3-17-2010	Amend	5-1-2010
734-065-0020	11-17-2009	Amend	1-1-2010	735-063-0070	3-17-2010	Amend	5-1-2010
734-065-0025	11-17-2009	Amend	1-1-2010	735-063-0075	3-17-2010	Amend	5-1-2010
734-065-0030	11-17-2009	Repeal	1-1-2010	735-064-0100	1-1-2010	Amend	2-1-2010
734-065-0035	11-17-2009	Amend	1-1-2010	735-064-0220	1-1-2010	Amend	2-1-2010
734-065-0040	11-17-2009	Amend	1-1-2010	735-070-0000	1-1-2010	Amend	2-1-2010
734-065-0045	11-17-2009	Amend	1-1-2010	735-070-0000	4-28-2010	Amend	6-1-2010
734-065-0050	11-17-2009	Amend	1-1-2010	735-070-0043	1-1-2010	Repeal	2-1-2010
734-074-0008	3-17-2010	Amend	5-1-2010	735-070-0170	1-1-2010	Amend	2-1-2010
734-074-0020	3-17-2010	Amend	5-1-2010	735-072-0035	1-1-2010	Amend	2-1-2010
735-001-0050	5-18-2010	Amend	7-1-2010	735-080-0020	1-1-2010	Amend	2-1-2010
735-020-0080	1-1-2010	Amend	2-1-2010	735-080-0040	1-1-2010	Amend	2-1-2010
735-024-0015	2-25-2010	Amend	4-1-2010	735-080-0060	1-1-2010	Amend	2-1-2010
735-024-0015(T)	2-25-2010	Repeal	4-1-2010	735-090-0120	1-1-2010	Amend	2-1-2010
735-024-0025	2-25-2010	Amend	4-1-2010	735-090-0125	1-1-2010	Adopt	2-1-2010
735-024-0025(T)	2-25-2010	Repeal	4-1-2010	735-150-0005	2-25-2010	Amend	4-1-2010
735-024-0075	1-1-2010	Amend(T)	2-1-2010	735-150-0005(T)	2-25-2010	Repeal	4-1-2010
735-024-0075	6-16-2010	Amend	8-1-2010	735-150-0010	1-1-2010	Amend	2-1-2010
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735-024-0080	1-1-2010	Suspend	2-1-2010	735-150-0042	1-1-2010	Adopt	2-1-2010
735-024-0080	6-16-2010	Repeal	8-1-2010	735-150-0047	1-1-2010	Adopt	2-1-2010
735-024-0130	1-1-2010	Amend(T)	2-1-2010	735-150-0110	1-1-2010	Amend	2-1-2010
735-024-0130	6-16-2010	Amend	8-1-2010	735-158-0000	1-1-2010	Amend(T)	2-1-2010
735-024-0130(T)	6-16-2010	Repeal	8-1-2010	735-158-0000	6-16-2010	Amend	8-1-2010
735-032-0010	2-25-2010	Amend	4-1-2010	735-158-0000(T)	6-16-2010	Repeal	8-1-2010
735-032-0010(T)	2-25-2010	Repeal	4-1-2010	735-158-0005	1-1-2010	Amend(T)	2-1-2010
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735-040-0097(T)	1-28-2010	Repeal	3-1-2010	735-158-0010	1-1-2010	Amend(T)	2-1-2010
735-040-0098	1-28-2010	Adopt	3-1-2010	735-158-0010	6-16-2010	Amend	8-1-2010
735-040-0098(T)	1-28-2010	Repeal	3-1-2010	735-158-0010(T)	6-16-2010	Repeal	8-1-2010
735-046-0010	1-28-2010	Amend	3-1-2010	736-004-0005	12-8-2009	Amend	1-1-2010
735-046-0010(T)	1-28-2010	Repeal	3-1-2010	736-004-0010	12-8-2009	Amend	1-1-2010
735-046-0050	1-28-2010	Amend	3-1-2010	736-004-0015	12-8-2009	Amend	1-1-2010
735-046-0050(T)	1-28-2010	Repeal	3-1-2010	736-004-0020	12-8-2009	Amend	1-1-2010
735-050-0050	1-1-2010	Amend	2-1-2010	736-004-0025	12-8-2009	Amend	1-1-2010
735-050-0060	1-1-2010	Amend	2-1-2010	736-004-0030	12-8-2009	Amend	1-1-2010
735-050-0062	1-1-2010	Amend	2-1-2010	736-004-0035	12-8-2009	Adopt	1-1-2010
735-050-0064	1-1-2010	Amend	2-1-2010	736-004-0060	12-8-2009	Amend	1-1-2010
735-050-0070	1-1-2010	Amend	2-1-2010	736-004-0062	12-8-2009	Amend	1-1-2010
735-050-0080	1-1-2010	Amend	2-1-2010	736-004-0065	12-8-2009	Amend	1-1-2010
735-050-0120	1-1-2010	Amend	2-1-2010	736-004-0080	12-8-2009	Repeal	1-1-2010
735-062-0003	1-1-2010	Repeal	2-1-2010	736-004-0085	12-8-2009	Amend	1-1-2010
735-062-0007	1-1-2010	Amend	2-1-2010	736-004-0090	12-8-2009	Amend	1-1-2010
735-062-0010	1-1-2010	Amend	2-1-2010	736-004-0095	12-8-2009	Amend	1-1-2010
735-062-0015	1-1-2010	Amend	2-1-2010	736-004-0110	12-8-2009	Amend	1-1-2010
735-062-0020	1-1-2010	Amend	2-1-2010	736-004-0115	12-8-2009	Amend	1-1-2010
735-062-0035	1-1-2010	Amend	2-1-2010	736-004-0120	12-8-2009	Adopt	1-1-2010

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736-009-0005	12-8-2009	Repeal	1-1-2010	736-146-0030	12-4-2009	Repeal	1-1-2010
736-009-0006	12-8-2009	Adopt	1-1-2010	736-146-0040	12-4-2009	Repeal	1-1-2010
736-009-0010	12-8-2009	Repeal	1-1-2010	736-146-0050	12-4-2009	Amend	1-1-2010
736-009-0015	12-8-2009	Repeal	1-1-2010	736-146-0060	12-4-2009	Amend	1-1-2010
736-009-0020	12-8-2009	Amend	1-1-2010	736-146-0070	12-4-2009	Amend	1-1-2010
736-009-0021	12-8-2009	Adopt	1-1-2010	736-146-0080	12-4-2009	Amend	1-1-2010
736-009-0022	12-8-2009	Adopt	1-1-2010	736-146-0090	12-4-2009	Amend	1-1-2010
736-009-0025	12-8-2009	Amend	1-1-2010	736-146-0100	12-4-2009	Amend	1-1-2010
736-009-0030	12-8-2009	Amend	1-1-2010	736-146-0110	12-4-2009	Amend	1-1-2010
736-010-0055	2-3-2010	Amend(T)	3-1-2010	736-146-0120	12-4-2009	Amend	1-1-2010
736-010-0055	6-15-2010	Amend	7-1-2010	736-146-0130	12-4-2009	Amend	1-1-2010
736-010-0055(T)	6-15-2010	Repeal	7-1-2010	736-146-0140	12-4-2009	Amend	1-1-2010
736-015-0006	3-24-2010	Amend	5-1-2010	736-147-0010	12-4-2009	Amend	1-1-2010
736-015-0010	4-15-2010	Amend(T)	5-1-2010	736-147-0020	12-4-2009	Repeal	1-1-2010
736-015-0015	3-24-2010	Amend	5-1-2010	736-147-0030	12-4-2009	Amend	1-1-2010
736-015-0020	1-5-2010	Amend	2-1-2010	736-147-0040	12-4-2009	Adopt	1-1-2010
736-015-0020	4-15-2010	Amend(T)	5-1-2010	736-147-0050	12-4-2009	Amend	1-1-2010
736-015-0026	4-15-2010	Amend(T)	5-1-2010	736-147-0060	12-4-2009	Amend	1-1-2010
736-015-0030	1-5-2010	Amend	2-1-2010	736-147-0070	12-4-2009	Adopt	1-1-2010
736-015-0030	3-24-2010	Amend	5-1-2010	736-148-0010	12-4-2009	Amend	1-1-2010
736-015-0030	4-15-2010	Amend(T)	5-1-2010	736-148-0020	12-4-2009	Amend	1-1-2010
736-015-0035	1-5-2010	Amend	2-1-2010	736-149-0010	12-4-2009	Amend	1-1-2010
736-015-0040	1-5-2010	Amend	2-1-2010	737-010-0000	2-25-2010	Adopt	4-1-2010
736-029-0010	6-30-2011	Adopt	3-1-2010	737-010-0000(T)	2-25-2010	Repeal	4-1-2010
736-029-0030	6-30-2011	Adopt	3-1-2010	737-010-0010	2-25-2010	Adopt	4-1-2010
736-029-0040	6-30-2011	Adopt	3-1-2010	737-010-0010(T)	2-25-2010	Repeal	4-1-2010
736-029-0050	6-30-2011	Adopt	3-1-2010	737-010-0020	2-25-2010	Adopt	4-1-2010
736-040-0055	6-16-2010	Amend	8-1-2010	737-010-0020(T)	2-25-2010	Repeal	4-1-2010
736-050-0001	2-3-2010	Amend	3-1-2010	737-015-0020	2-25-2010	Amend(T)	4-1-2010
736-050-0002	2-3-2010	Repeal	3-1-2010	737-015-0030	2-25-2010	Amend(T)	4-1-2010
736-050-0005	2-3-2010	Repeal	3-1-2010	737-015-0090	2-25-2010	Amend(T)	4-1-2010
736-050-0100	2-3-2010	Amend	3-1-2010	737-015-0100	2-25-2010	Amend(T)	4-1-2010
736-050-0105	2-3-2010	Amend	3-1-2010	737-015-0110	2-25-2010	Amend(T)	4-1-2010
736-050-0110	2-3-2010	Repeal	3-1-2010	738-010-0025	1-7-2010	Amend(T)	2-1-2010
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736-050-0120	2-3-2010	Amend	3-1-2010	738-015-0005	1-7-2010	Amend(T)	2-1-2010
736-050-0120(T)	2-3-2010	Repeal	3-1-2010	738-015-0005	7-7-2010	Amend	7-1-2010
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736-050-0135	2-3-2010	Amend	3-1-2010	740-100-0070	4-1-2010	Amend	5-1-2010
736-050-0135(T)	2-3-2010	Repeal	3-1-2010	740-100-0080	4-1-2010	Amend	5-1-2010
736-050-0140	2-3-2010	Amend	3-1-2010	740-100-0085	4-1-2010	Amend	5-1-2010
736-050-0140(T)	2-3-2010	Repeal	3-1-2010	740-100-0090	4-1-2010	Amend	5-1-2010
736-050-0150	2-3-2010	Repeal	3-1-2010	740-110-0010	4-1-2010	Amend	5-1-2010
736-050-0150(T)	2-3-2010	Repeal	3-1-2010	740-200-0040	1-1-2010	Amend	2-1-2010
736-140-0005	12-8-2009	Adopt	1-1-2010	740-200-0045	1-1-2010	Amend	2-1-2010
736-140-0015	12-8-2009	Adopt	1-1-2010	800-001-0020	2-1-2010	Amend	3-1-2010
736-146-0010	12-4-2009	Amend	1-1-2010	800-010-0015	2-1-2010	Amend	3-1-2010
736-146-0012	12-4-2009	Amend	1-1-2010	800-010-0017	2-1-2010	Amend	3-1-2010
736-146-0015	12-4-2009	Amend	1-1-2010	800-010-0025	2-1-2010	Amend	3-1-2010
736-146-0020	12-4-2009	Amend	1-1-2010	800-010-0030	2-1-2010	Amend	3-1-2010

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800-010-0050	2-1-2010	Amend	3-1-2010	808-002-0220	1-1-2010	Amend	2-1-2010
800-015-0005	2-1-2010	Amend	3-1-2010	808-002-0500	1-1-2010	Amend	2-1-2010
800-015-0010	2-1-2010	Amend	3-1-2010	808-002-0620	1-1-2010	Amend	2-1-2010
800-015-0020	2-1-2010	Amend	3-1-2010	808-002-0775	1-1-2010	Adopt	2-1-2010
800-020-0015	2-1-2010	Amend	3-1-2010	808-002-0808	1-1-2010	Adopt	2-1-2010
800-020-0025	2-1-2010	Amend	3-1-2010	808-002-0882	1-1-2010	Adopt	2-1-2010
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800-025-0020	2-1-2010	Amend	3-1-2010	808-002-0885	6-1-2010	Amend	7-1-2010
800-025-0023	2-1-2010	Amend	3-1-2010	808-002-0895	1-1-2010	Adopt	2-1-2010
800-025-0025	2-1-2010	Amend	3-1-2010	808-003-0010	6-1-2010	Amend	7-1-2010
800-025-0027	2-1-2010	Amend	3-1-2010	808-003-0010	6-2-2010	Amend	7-1-2010
800-025-0029	2-1-2010	Amend	3-1-2010	808-003-0018	6-1-2010	Amend	7-1-2010
800-025-0030	2-1-2010	Amend	3-1-2010	808-003-0020	1-1-2010	Amend	2-1-2010
800-025-0040	2-1-2010	Amend	3-1-2010	808-003-0040	1-1-2010	Amend	2-1-2010
800-025-0050	2-1-2010	Amend	3-1-2010	808-003-0055	1-1-2010	Amend	2-1-2010
800-030-0035	2-1-2010	Amend	3-1-2010	808-003-0060	1-1-2010	Amend	2-1-2010
800-030-0050	2-1-2010	Amend	3-1-2010	808-003-0075	1-1-2010	Amend	2-1-2010
801-001-0035	1-1-2010	Amend	1-1-2010	808-003-0080	1-1-2010	Amend	2-1-2010
801-005-0010	1-1-2010	Amend	1-1-2010	808-003-0085	1-1-2010	Amend	2-1-2010
801-010-0010	1-1-2010	Amend	1-1-2010	808-003-0100	1-1-2010	Amend	2-1-2010
801-010-0060	1-1-2010	Amend	1-1-2010	808-003-0105	1-1-2010	Repeal	2-1-2010
801-010-0075	1-1-2010	Amend	1-1-2010	808-003-0125	1-1-2010	Amend	2-1-2010
801-010-0080	1-1-2010	Amend	1-1-2010	808-003-0130	6-2-2010	Amend	7-1-2010
801-010-0100	1-1-2010	Amend	1-1-2010	808-003-0210	1-1-2010	Amend	2-1-2010
801-010-0120	1-1-2010	Amend	1-1-2010	808-003-0610	12-1-2009	Amend(T)	1-1-2010
801-010-0345	1-1-2010	Amend	1-1-2010	808-003-0610	6-2-2010	Amend	7-1-2010
801-020-0690	1-1-2010	Amend	1-1-2010	808-005-0020	1-27-2010	Amend	3-1-2010
801-030-0020	1-1-2010	Amend	1-1-2010	808-005-0020	6-1-2010	Amend	7-1-2010
801-040-0010	1-1-2010	Amend	1-1-2010	808-040-0020	1-27-2010	Amend	3-1-2010
801-050-0005	1-1-2010	Amend	1-1-2010	808-040-0060	1-27-2010	Amend	3-1-2010
801-050-0010	1-1-2010	Amend	1-1-2010	808-040-0060	6-1-2010	Amend	7-1-2010
801-050-0020	1-1-2010	Amend	1-1-2010	809-055-0000	12-11-2009	Amend	1-1-2010
801-050-0030	1-1-2010	Amend	1-1-2010	811-010-0071	12-22-2009	Amend	2-1-2010
801-050-0035	1-1-2010	Amend	1-1-2010	811-010-0110	6-15-2010	Amend	7-1-2010
801-050-0040	1-1-2010	Amend	1-1-2010	811-010-0120	4-15-2010	Amend	5-1-2010
801-050-0065	1-1-2010	Amend	1-1-2010	811-015-0002	6-15-2010	Adopt	7-1-2010
801-050-0070	1-1-2010	Amend	1-1-2010	811-035-0005	12-22-2009	Amend	2-1-2010
801-050-0080	1-1-2010	Amend	1-1-2010	811-035-0015	12-22-2009	Amend	2-1-2010
804-003-0000	2-17-2010	Amend	4-1-2010	812-001-0180	7-1-2010	Amend	8-1-2010
804-020-0003	12-11-2009	Amend	1-1-2010	812-001-0200	1-1-2010	Amend	1-1-2010
804-022-0000	2-17-2010	Amend	4-1-2010	812-001-0200	2-1-2010	Amend	3-1-2010
804-022-0025	12-11-2009	Adopt	1-1-2010	812-002-0140	7-1-2010	Amend	8-1-2010
804-025-0020	2-17-2010	Amend	4-1-2010	812-002-0390	5-18-2010	Adopt(T)	7-1-2010
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804-035-0010	2-17-2010	Amend	4-1-2010	812-003-0140	1-1-2010	Amend	1-1-2010
804-035-0020	2-17-2010	Amend	4-1-2010	812-003-0140	7-1-2010	Amend	6-1-2010
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806-010-0020	10-3-2010	Amend	7-1-2010	812-004-0320	1-1-2010	Amend	1-1-2010
806-010-0035	10-3-2010	Amend	7-1-2010	812-004-0320	7-1-2010	Amend	8-1-2010
806-010-0060	4-6-2010	Amend	5-1-2010	812-004-0340	4-28-2010	Amend	6-1-2010
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812-005-0800	4-28-2010	Amend	6-1-2010	812-020-0082	2-1-2010	Repeal	3-1-2010
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812-007-0000	2-1-2010	Amend	3-1-2010	812-030-0000	2-1-2010	Adopt	3-1-2010
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812-007-0025	2-1-2010	Adopt	3-1-2010	812-030-0220	2-1-2010	Adopt	3-1-2010
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812-007-0040	2-1-2010	Repeal	3-1-2010	812-030-0240	2-1-2010	Adopt	3-1-2010
812-007-0050	2-1-2010	Repeal	3-1-2010	812-030-0250	2-1-2010	Adopt	3-1-2010
812-007-0060	2-1-2010	Repeal	3-1-2010	812-030-0300	2-1-2010	Adopt	3-1-2010
812-007-0070	2-1-2010	Repeal	3-1-2010	813-001-0009	6-17-2010	Adopt	8-1-2010
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812-007-0100	2-1-2010	Adopt	3-1-2010	813-007-0015	1-7-2010	Adopt	2-1-2010
812-007-0110	2-1-2010	Adopt	3-1-2010	813-007-0020	1-7-2010	Adopt	2-1-2010
812-007-0120	2-1-2010	Adopt	3-1-2010	813-007-0025	1-7-2010	Adopt	2-1-2010
812-007-0130	2-1-2010	Adopt	3-1-2010	813-007-0030	1-7-2010	Adopt	2-1-2010
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812-007-0200	2-1-2010	Adopt	3-1-2010	813-007-0050	1-7-2010	Adopt	2-1-2010
812-007-0205	2-1-2010	Adopt	3-1-2010	813-007-0055	1-7-2010	Adopt	2-1-2010
812-007-0210	2-1-2010	Adopt	3-1-2010	813-007-0060	1-7-2010	Adopt	2-1-2010
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812-007-0240	2-1-2010	Adopt	3-1-2010	813-027-0001	2-25-2010	Adopt(T)	4-1-2010
812-007-0250	2-1-2010	Adopt	3-1-2010	813-027-0010	2-25-2010	Adopt(T)	4-1-2010
812-007-0260	2-1-2010	Adopt	3-1-2010	813-027-0020	2-25-2010	Adopt(T)	4-1-2010
812-007-0300	2-1-2010	Adopt	3-1-2010	813-027-0030	2-25-2010	Adopt(T)	4-1-2010
812-007-0310	2-1-2010	Adopt	3-1-2010	813-027-0040	2-25-2010	Adopt(T)	4-1-2010
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812-007-0320	2-1-2010	Adopt	3-1-2010	813-027-0060	2-25-2010	Adopt(T)	4-1-2010
812-007-0330	2-1-2010	Adopt	3-1-2010	813-027-0070	2-25-2010	Adopt(T)	4-1-2010
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812-007-0374	2-1-2010	Adopt	3-1-2010	813-028-0050	2-25-2010	Adopt(T)	4-1-2010
812-008-0070	1-1-2010	Amend	1-1-2010	813-028-0060	2-25-2010	Adopt(T)	4-1-2010
812-008-0090	1-1-2010	Amend	2-1-2010	813-028-0070	2-25-2010	Adopt(T)	4-1-2010
812-008-0110	1-1-2010	Amend	1-1-2010	813-028-0080	2-25-2010	Adopt(T)	4-1-2010
812-008-0202	1-1-2010	Amend	1-1-2010	813-028-0090	2-25-2010	Adopt(T)	4-1-2010
812-009-0340	2-3-2010	Amend(T)	3-1-2010	813-041-0000	12-15-2009	Amend(T)	1-1-2010
812-009-0340	4-28-2010	Amend	6-1-2010	813-041-0000	6-10-2010	Amend	7-1-2010
812-009-0430	7-1-2010	Amend	8-1-2010	813-041-0000(T)	6-10-2010	Repeal	7-1-2010
812-012-0110	1-1-2010	Amend	2-1-2010	813-041-0005	12-15-2009	Amend(T)	1-1-2010
812-012-0110	4-28-2010	Amend	6-1-2010	813-041-0005	6-10-2010	Repeal	7-1-2010
812-020-0055	5-18-2010	Amend(T)	7-1-2010	813-041-0010	12-15-2009	Amend(T)	1-1-2010

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813-041-0010(T)	6-10-2010	Repeal	7-1-2010	818-026-0065	7-1-2010	Adopt	8-1-2010
813-041-0015	12-15-2009	Amend(T)	1-1-2010	818-026-0070	7-1-2010	Amend	8-1-2010
813-041-0015	6-10-2010	Amend	7-1-2010	818-026-0080	7-1-2010	Amend	8-1-2010
813-041-0015(T)	6-10-2010	Repeal	7-1-2010	818-026-0100	7-1-2010	Repeal	8-1-2010
813-041-0020	12-15-2009	Amend(T)	1-1-2010	818-026-0110	7-1-2010	Amend	8-1-2010
813-041-0020	6-10-2010	Amend	7-1-2010	818-026-0120	7-1-2010	Amend	8-1-2010
813-041-0020	6-17-2010	Amend(T)	8-1-2010	818-026-0130	7-1-2010	Amend	8-1-2010
813-041-0020(T)	6-10-2010	Repeal	7-1-2010	818-035-0065	7-1-2010	Amend	8-1-2010
813-041-0025	12-15-2009	Amend(T)	1-1-2010	818-035-0075	7-1-2010	Repeal	8-1-2010
813-041-0025	6-10-2010	Repeal	7-1-2010	818-042-0040	7-1-2010	Amend	8-1-2010
813-041-0027	12-15-2009	Adopt(T)	1-1-2010	820-001-0000	5-12-2010	Amend	6-1-2010
813-041-0027	6-10-2010	Adopt	7-1-2010	820-010-0212	5-12-2010	Amend	6-1-2010
813-041-0027(T)	6-10-2010	Repeal	7-1-2010	820-010-0213	5-12-2010	Amend	6-1-2010
813-041-0030	12-15-2009	Amend(T)	1-1-2010	820-010-0214	5-12-2010	Amend	6-1-2010
813-041-0030	6-10-2010	Amend	7-1-2010	820-010-0215	5-12-2010	Amend	6-1-2010
813-041-0030(T)	6-10-2010	Repeal	7-1-2010	820-010-0305	5-12-2010	Amend	6-1-2010
813-041-0035	12-15-2009	Adopt(T)	1-1-2010	820-010-0440	5-12-2010	Amend	6-1-2010
813-041-0035(T)	6-10-2010	Repeal	7-1-2010	820-010-0450	5-12-2010	Amend	6-1-2010
813-044-0000	12-22-2009	Amend	2-1-2010	820-010-0470	5-12-2010	Amend	6-1-2010
813-044-0010	12-22-2009	Amend	2-1-2010	820-010-0530	5-12-2010	Adopt	6-1-2010
813-044-0020	12-22-2009	Amend	2-1-2010	820-010-0610	5-12-2010	Amend	6-1-2010
813-044-0030	12-22-2009	Amend	2-1-2010	820-010-0625	5-12-2010	Amend	6-1-2010
813-044-0040	12-22-2009	Amend	2-1-2010	820-010-0635	5-12-2010	Amend	6-1-2010
813-044-0050	12-22-2009	Amend	2-1-2010	830-011-0000	4-1-2010	Amend(T)	5-1-2010
813-044-0060	12-22-2009	Adopt	2-1-2010	830-011-0050	4-1-2010	Amend(T)	5-1-2010
813-055-0001	12-22-2009	Adopt	2-1-2010	830-020-0000	4-1-2010	Amend(T)	5-1-2010
813-055-0010	12-22-2009	Adopt	2-1-2010	830-020-0020	4-1-2010	Amend(T)	5-1-2010
813-055-0020	12-22-2009	Adopt	2-1-2010	830-020-0040	4-1-2010	Amend(T)	5-1-2010
813-055-0030	12-22-2009	Adopt	2-1-2010	830-030-0090	4-1-2010	Amend(T)	5-1-2010
813-055-0040	12-22-2009	Adopt	2-1-2010	830-040-0000	4-1-2010	Amend(T)	5-1-2010
813-055-0050	12-22-2009	Adopt	2-1-2010	830-040-0050	4-1-2010	Amend(T)	5-1-2010
813-055-0060	12-22-2009	Adopt	2-1-2010	830-060-0010	4-1-2010	Adopt(T)	5-1-2010
813-055-0070	12-22-2009	Adopt	2-1-2010	830-060-0020	4-1-2010	Adopt(T)	5-1-2010
813-055-0080	12-22-2009	Adopt	2-1-2010	833-001-0000	1-5-2010	Amend	2-1-2010
813-055-0090	12-22-2009	Adopt	2-1-2010	833-001-0005	1-5-2010	Amend	2-1-2010
813-055-0100	12-22-2009	Adopt	2-1-2010	833-001-0010	1-5-2010	Amend	2-1-2010
813-055-0110	12-22-2009	Adopt	2-1-2010	833-001-0015	1-5-2010	Amend	2-1-2010
813-140-0096	1-7-2010	Amend	2-1-2010	833-001-0020	1-5-2010	Amend	2-1-2010
813-300-0010	1-7-2010	Amend	2-1-2010	833-010-0001	1-5-2010	Amend	2-1-2010
813-300-0100	1-7-2010	Amend	2-1-2010	833-010-0001	5-3-2010	Amend	6-1-2010
817-040-0003	12-26-2009	Amend(T)	2-1-2010	833-020-0001	1-5-2010	Repeal	2-1-2010
817-040-0003	4-1-2010	Amend	5-1-2010	833-020-0010	1-5-2010	Repeal	2-1-2010
817-040-0003(T)	4-1-2010	Repeal	5-1-2010	833-020-0011	1-5-2010	Adopt	2-1-2010
818-001-0087	7-1-2010	Amend	8-1-2010	833-020-0015	1-5-2010	Repeal	2-1-2010
818-015-0007	7-1-2010	Amend	8-1-2010	833-020-0020	1-5-2010	Repeal	2-1-2010
818-021-0017	7-1-2010	Amend	8-1-2010	833-020-0021	1-5-2010	Adopt	2-1-2010
818-021-0070	7-1-2010	Amend	8-1-2010	833-020-0022	1-5-2010	Repeal	2-1-2010
818-026-0000	7-1-2010	Amend	8-1-2010	833-020-0030	1-5-2010	Repeal	2-1-2010
818-026-0010	7-1-2010	Amend	8-1-2010	833-020-0031	1-5-2010	Adopt	2-1-2010
818-026-0020	7-1-2010	Amend	8-1-2010	833-020-0031	5-3-2010	Amend	6-1-2010
818-026-0030	7-1-2010	Amend	8-1-2010	833-020-0040	1-5-2010	Repeal	2-1-2010
818-026-0035	7-1-2010	Amend	8-1-2010	833-020-0041	1-5-2010	Adopt	2-1-2010
818-026-0040	7-1-2010	Amend	8-1-2010	833-020-0041	5-3-2010	Amend	6-1-2010
818-026-0050	7-1-2010	Amend	8-1-2010	833-020-0050	1-5-2010	Repeal	2-1-2010
818-026-0055	7-1-2010	Amend	8-1-2010	833-020-0051	1-5-2010	Adopt	2-1-2010

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833-020-0060	1-5-2010	Repeal	2-1-2010	833-050-0021	1-5-2010	Adopt	2-1-2010
833-020-0061	1-5-2010	Adopt	2-1-2010	833-050-0021	5-3-2010	Amend	6-1-2010
833-020-0061	5-3-2010	Amend	6-1-2010	833-050-0025	1-5-2010	Repeal	2-1-2010
833-020-0071	1-5-2010	Adopt	2-1-2010	833-050-0030	1-5-2010	Repeal	2-1-2010
833-020-0080	1-5-2010	Repeal	2-1-2010	833-050-0031	1-5-2010	Adopt	2-1-2010
833-020-0081	1-5-2010	Adopt	2-1-2010	833-050-0040	1-5-2010	Repeal	2-1-2010
833-020-0090	1-5-2010	Repeal	2-1-2010	833-050-0041	1-5-2010	Adopt	2-1-2010
833-020-0091	1-5-2010	Adopt	2-1-2010	833-050-0051	1-5-2010	Adopt	2-1-2010
833-020-0100	1-5-2010	Repeal	2-1-2010	833-050-0051	5-3-2010	Amend	6-1-2010
833-020-0101	1-5-2010	Adopt	2-1-2010	833-050-0061	1-5-2010	Adopt	2-1-2010
833-020-0111	1-5-2010	Repeal	2-1-2010	833-050-0071	1-5-2010	Adopt	2-1-2010
833-020-0112	1-5-2010	Adopt	2-1-2010	833-050-0081	1-5-2010	Adopt	2-1-2010
833-020-0120	1-5-2010	Repeal	2-1-2010	833-050-0081	5-3-2010	Amend	6-1-2010
833-020-0140	1-5-2010	Repeal	2-1-2010	833-050-0081	7-1-2010	Amend	7-1-2010
833-020-0150	1-5-2010	Repeal	2-1-2010	833-050-0091	1-5-2010	Adopt	2-1-2010
833-020-0155	1-5-2010	Repeal	2-1-2010	833-050-0111	1-5-2010	Adopt	2-1-2010
833-020-0160	1-5-2010	Repeal	2-1-2010	833-050-0121	1-5-2010	Adopt	2-1-2010
833-020-0164	1-5-2010	Repeal	2-1-2010	833-050-0131	1-5-2010	Adopt	2-1-2010
833-020-0165	1-5-2010	Repeal	2-1-2010	833-050-0141	1-5-2010	Adopt	2-1-2010
833-020-0201	1-11-2010	Adopt(T)	2-1-2010	833-050-0151	1-5-2010	Adopt	2-1-2010
833-020-0201	5-3-2010	Adopt	6-1-2010	833-050-0161	1-5-2010	Adopt	2-1-2010
833-020-0201(T)	5-3-2010	Repeal	6-1-2010	833-055-0001	7-1-2010	Suspend	7-1-2010
833-020-0301	5-3-2010	Adopt	6-1-2010	833-055-0010	7-1-2010	Suspend	7-1-2010
833-025-0001	1-5-2010	Repeal	2-1-2010	833-055-0020	7-1-2010	Suspend	7-1-2010
833-025-0005	1-5-2010	Repeal	2-1-2010	833-060-0011	1-5-2010	Repeal	2-1-2010
833-025-0006	1-5-2010	Repeal	2-1-2010	833-060-0012	1-5-2010	Adopt	2-1-2010
833-025-0050	1-5-2010	Repeal	2-1-2010	833-060-0012	5-3-2010	Amend	6-1-2010
833-025-0060	1-5-2010	Repeal	2-1-2010	833-060-0021	1-5-2010	Repeal	2-1-2010
833-030-0001	1-5-2010	Repeal	2-1-2010	833-060-0022	1-5-2010	Adopt	2-1-2010
833-030-0005	1-5-2010	Repeal	2-1-2010	833-060-0022	5-3-2010	Amend	6-1-2010
833-030-0010	1-5-2010	Repeal	2-1-2010	833-060-0031	1-5-2010	Repeal	2-1-2010
833-030-0011	1-5-2010	Adopt	2-1-2010	833-060-0032	1-5-2010	Adopt	2-1-2010
833-030-0015	1-5-2010	Repeal	2-1-2010	833-060-0032	5-3-2010	Amend	6-1-2010
833-030-0020	1-5-2010	Repeal	2-1-2010	833-060-0041	1-5-2010	Repeal	2-1-2010
833-030-0021	1-5-2010	Adopt	2-1-2010	833-060-0042	1-5-2010	Adopt	2-1-2010
833-030-0021	5-3-2010	Amend	6-1-2010	833-060-0051	1-5-2010	Repeal	2-1-2010
833-030-0031	1-5-2010	Adopt	2-1-2010	833-060-0052	1-5-2010	Adopt	2-1-2010
833-030-0031	5-3-2010	Amend	6-1-2010	833-060-0061	1-5-2010	Repeal	2-1-2010
833-030-0041	1-5-2010	Adopt	2-1-2010	833-060-0071	1-5-2010	Repeal	2-1-2010
833-030-0051	1-5-2010	Adopt	2-1-2010	833-070-0011	1-5-2010	Adopt	2-1-2010
833-040-0001	1-5-2010	Repeal	2-1-2010	833-070-0011	1-11-2010	Amend(T)	2-1-2010
833-040-0010	1-5-2010	Repeal	2-1-2010	833-070-0011	5-3-2010	Amend	6-1-2010
833-040-0011	1-5-2010	Adopt	2-1-2010	833-070-0011(T)	5-3-2010	Repeal	6-1-2010
833-040-0020	1-5-2010	Repeal	2-1-2010	833-070-0021	1-5-2010	Adopt	2-1-2010
833-040-0021	1-5-2010	Adopt	2-1-2010	833-070-0031	1-5-2010	Adopt	2-1-2010
833-040-0021	5-3-2010	Amend	6-1-2010	833-080-0011	1-5-2010	Adopt	2-1-2010
833-040-0031	1-5-2010	Adopt	2-1-2010	833-080-0021	1-5-2010	Adopt	2-1-2010
833-040-0031	5-3-2010	Amend	6-1-2010	833-080-0031	1-5-2010	Adopt	2-1-2010
833-040-0041	1-5-2010	Adopt	2-1-2010	833-080-0041	1-5-2010	Adopt	2-1-2010
833-040-0041	5-3-2010	Amend	6-1-2010	833-080-0051	1-5-2010	Adopt	2-1-2010
833-040-0051	1-5-2010	Adopt	2-1-2010	833-080-0061	1-5-2010	Adopt	2-1-2010
833-050-0001	1-5-2010	Repeal	2-1-2010	833-090-0010	1-5-2010	Adopt	2-1-2010
833-050-0010	1-5-2010	Repeal	2-1-2010	833-090-0020	1-5-2010	Adopt	2-1-2010
833-050-0011	1-5-2010	Adopt	2-1-2010	833-090-0030	1-5-2010	Adopt	2-1-2010
833-050-0011	5-3-2010	Amend	6-1-2010	833-090-0040	1-5-2010	Adopt	2-1-2010

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833-100-0021	1-5-2010	Adopt	2-1-2010	836-014-0325	1-5-2010	Adopt	2-1-2010
833-100-0031	1-5-2010	Adopt	2-1-2010	836-042-0080	7-1-2010	Amend	6-1-2010
833-100-0041	1-5-2010	Adopt	2-1-2010	836-042-0100	7-1-2010	Adopt	6-1-2010
833-100-0051	1-5-2010	Adopt	2-1-2010	836-042-0105	7-1-2010	Adopt	6-1-2010
833-100-0061	1-5-2010	Adopt	2-1-2010	836-042-0110	7-1-2010	Adopt	6-1-2010
833-100-0071	1-5-2010	Adopt	2-1-2010	836-042-0115	7-1-2010	Adopt	6-1-2010
833-110-0011	1-5-2010	Adopt	2-1-2010	836-052-1000	12-18-2009	Amend	2-1-2010
833-110-0011	5-3-2010	Amend	6-1-2010	836-053-0000	2-16-2010	Adopt	4-1-2010
833-110-0021	1-5-2010	Adopt	2-1-2010	836-053-0081	4-22-2010	Amend(T)	6-1-2010
833-120-0011	1-5-2010	Adopt	2-1-2010	836-053-0465	2-16-2010	Amend	4-1-2010
833-120-0021	1-5-2010	Adopt	2-1-2010	836-053-0471	2-16-2010	Adopt	4-1-2010
833-120-0031	1-5-2010	Adopt	2-1-2010	836-053-0475	2-16-2010	Adopt	4-1-2010
833-120-0041	1-5-2010	Adopt	2-1-2010	836-053-0780	2-16-2010	Amend	4-1-2010
833-130-0010	7-1-2010	Adopt	7-1-2010	836-053-0850	6-11-2010	Repeal	7-1-2010
833-130-0020	7-1-2010	Adopt	7-1-2010	836-053-0851	6-11-2010	Adopt	7-1-2010
833-130-0030	7-1-2010	Adopt	7-1-2010	836-053-0855	12-23-2009	Amend(T)	2-1-2010
833-130-0040	7-1-2010	Adopt	7-1-2010	836-053-0855	1-8-2010	Amend(T)	2-1-2010
833-130-0050	7-1-2010	Adopt	7-1-2010	836-053-0855	3-10-2010	Amend(T)	4-1-2010
833-130-0060	7-1-2010	Adopt	7-1-2010	836-053-0855	4-26-2010	Amend(T)	6-1-2010
833-130-0070	7-1-2010	Adopt	7-1-2010	836-053-0855	6-11-2010	Repeal	7-1-2010
834-010-0050	6-23-2010	Amend	8-1-2010	836-053-0855(T)	1-8-2010	Suspend	2-1-2010
836-009-0007	2-1-2010	Amend	2-1-2010	836-053-0855(T)	3-10-2010	Suspend	4-1-2010
836-009-0020	3-25-2010	Adopt	5-1-2010	836-053-0855(T)	4-26-2010	Suspend	6-1-2010
836-009-0020(T)	3-25-2010	Repeal	5-1-2010	836-053-0856	6-11-2010	Adopt	7-1-2010
836-009-0025	3-25-2010	Adopt	5-1-2010	836-053-0860	12-23-2009	Amend(T)	2-1-2010
836-009-0025(T)	3-25-2010	Repeal	5-1-2010	836-053-0860	1-8-2010	Amend(T)	2-1-2010
836-009-0030	3-25-2010	Adopt	5-1-2010	836-053-0860	3-10-2010	Amend(T)	4-1-2010
836-009-0030(T)	3-25-2010	Repeal	5-1-2010	836-053-0860	4-26-2010	Amend(T)	6-1-2010
836-009-0035	3-25-2010	Adopt	5-1-2010	836-053-0860	6-11-2010	Repeal	7-1-2010
836-009-0035(T)	3-25-2010	Repeal	5-1-2010	836-053-0860(T)	1-8-2010	Suspend	2-1-2010
836-009-0040	3-25-2010	Adopt	5-1-2010	836-053-0860(T)	3-10-2010	Suspend	4-1-2010
836-009-0040(T)	3-25-2010	Repeal	5-1-2010	836-053-0860(T)	4-26-2010	Suspend	6-1-2010
836-010-0000	4-1-2010	Amend	5-1-2010	836-053-0861	6-11-2010	Adopt	7-1-2010
836-010-0011	4-1-2010	Amend	5-1-2010	836-053-0865	12-23-2009	Amend(T)	2-1-2010
836-010-0012	4-1-2010	Adopt	5-1-2010	836-053-0865	1-8-2010	Amend(T)	2-1-2010
836-011-0000	12-9-2009	Amend	1-1-2010	836-053-0865	3-10-2010	Amend(T)	4-1-2010
836-012-0300	2-5-2010	Amend	3-1-2010	836-053-0865	4-26-2010	Amend(T)	6-1-2010
836-012-0310	2-5-2010	Amend	3-1-2010	836-053-0865	6-11-2010	Repeal	7-1-2010
836-012-0332	2-5-2010	Adopt	3-1-2010	836-053-0865(T)	1-8-2010	Suspend	2-1-2010
836-014-0200	1-5-2010	Amend	2-1-2010	836-053-0865(T)	3-10-2010	Suspend	4-1-2010
836-014-0205	1-5-2010	Adopt	2-1-2010	836-053-0865(T)	4-26-2010	Suspend	6-1-2010
836-014-0210	1-5-2010	Amend	2-1-2010	836-053-0866	6-11-2010	Adopt	7-1-2010
836-014-0220	1-5-2010	Amend	2-1-2010	836-053-0910	2-16-2010	Amend	4-1-2010
836-014-0226	1-5-2010	Adopt	2-1-2010	836-054-0210	7-1-2010	Amend	6-1-2010
836-014-0240	1-5-2010	Amend	2-1-2010	836-071-0101	2-1-2010	Amend	2-1-2010
836-014-0250	1-5-2010	Amend	2-1-2010	836-071-0113	2-1-2010	Adopt	2-1-2010
836-014-0260	1-5-2010	Amend	2-1-2010	836-071-0127	2-1-2010	Amend	2-1-2010
836-014-0263	1-5-2010	Adopt	2-1-2010	836-071-0130	2-1-2010	Amend	2-1-2010
836-014-0265	1-5-2010	Amend	2-1-2010	836-071-0185	2-1-2010	Amend	2-1-2010
836-014-0270	1-5-2010	Amend	2-1-2010	836-080-0240	1-1-2010	Amend	2-1-2010
836-014-0280	1-5-2010	Amend	2-1-2010	837-040-0010	4-1-2010	Amend	1-1-2010
836-014-0285	1-5-2010	Adopt	2-1-2010	837-040-0010	7-1-2010	Amend(T)	3-1-2010
836-014-0290	1-5-2010	Amend	2-1-2010	837-040-0020	7-1-2010	Amend(T)	3-1-2010
836-014-0300	1-5-2010	Amend	2-1-2010	837-040-0140	4-1-2010	Amend	1-1-2010
836-014-0310	1-5-2010	Amend	2-1-2010	837-040-0140	7-1-2010	Amend(T)	3-1-2010

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837-046-0000	11-21-2009	Adopt	1-1-2010	839-002-0030	2-12-2010	Amend(T)	3-1-2010
837-046-0020	11-21-2009	Adopt	1-1-2010	839-002-0030	5-5-2010	Amend	6-1-2010
837-046-0040	11-21-2009	Adopt	1-1-2010	839-002-0030(T)	5-5-2010	Repeal	6-1-2010
837-046-0060	11-21-2009	Adopt	1-1-2010	839-002-0040	2-12-2010	Amend(T)	3-1-2010
837-046-0080	11-21-2009	Adopt	1-1-2010	839-002-0040	5-5-2010	Amend	6-1-2010
837-046-0100	11-21-2009	Adopt	1-1-2010	839-002-0040(T)	5-5-2010	Repeal	6-1-2010
837-046-0120	11-21-2009	Adopt	1-1-2010	839-002-0045	2-12-2010	Amend(T)	3-1-2010
837-046-0140	11-21-2009	Adopt	1-1-2010	839-002-0045	5-5-2010	Amend	6-1-2010
837-046-0160	11-21-2009	Adopt	1-1-2010	839-002-0045(T)	5-5-2010	Repeal	6-1-2010
837-046-0180	11-21-2009	Adopt	1-1-2010	839-002-0050	2-12-2010	Amend(T)	3-1-2010
837-047-0100	7-1-2010	Adopt(T)	5-1-2010	839-002-0050	5-5-2010	Amend	6-1-2010
837-047-0110	7-1-2010	Adopt(T)	5-1-2010	839-002-0050(T)	5-5-2010	Repeal	6-1-2010
837-047-0120	7-1-2010	Adopt(T)	5-1-2010	839-003-0005	2-24-2010	Amend	4-1-2010
837-047-0130	7-1-2010	Adopt(T)	5-1-2010	839-003-0025	2-24-2010	Amend	4-1-2010
837-047-0140	7-1-2010	Adopt(T)	5-1-2010	839-003-0040	2-24-2010	Amend	4-1-2010
837-047-0150	7-1-2010	Adopt(T)	5-1-2010	839-003-0200	2-24-2010	Amend	4-1-2010
837-047-0160	7-1-2010	Adopt(T)	5-1-2010	839-005-0000	2-24-2010	Amend	4-1-2010
837-047-0170	7-1-2010	Adopt(T)	5-1-2010	839-005-0003	2-24-2010	Amend	4-1-2010
837-085-0020	2-1-2010	Amend	3-1-2010	839-005-0005	2-24-2010	Amend	4-1-2010
837-085-0030	2-1-2010	Amend	3-1-2010	839-005-0010	2-24-2010	Amend	4-1-2010
837-085-0040	2-1-2010	Amend	3-1-2010	839-005-0016	2-24-2010	Renumber	4-1-2010
837-085-0050	2-1-2010	Amend	3-1-2010	839-005-0021	2-24-2010	Amend	4-1-2010
837-085-0060	2-1-2010	Amend	3-1-2010	839-005-0035	2-24-2010	Renumber	4-1-2010
837-085-0070	2-1-2010	Amend	3-1-2010	839-005-0045	2-24-2010	Renumber	4-1-2010
837-085-0080	2-1-2010	Amend	3-1-2010	839-005-0050	2-24-2010	Renumber	4-1-2010
837-085-0090	2-1-2010	Amend	3-1-2010	839-005-0060	7-1-2010	Adopt	7-1-2010
837-085-0100	2-1-2010	Amend	3-1-2010	839-005-0065	7-1-2010	Adopt	7-1-2010
837-085-0110	2-1-2010	Amend	3-1-2010	839-005-0070	7-1-2010	Adopt	7-1-2010
837-085-0120	2-1-2010	Amend	3-1-2010	839-005-0080	7-1-2010	Adopt	7-1-2010
837-085-0140	2-1-2010	Amend	3-1-2010	839-005-0085	7-1-2010	Adopt	7-1-2010
837-085-0150	2-1-2010	Amend	3-1-2010	839-005-0138	2-24-2010	Adopt	4-1-2010
837-085-0170	2-1-2010	Amend	3-1-2010	839-005-0140	2-24-2010	Adopt	4-1-2010
837-085-0180	2-1-2010	Amend	3-1-2010	839-005-0160	2-24-2010	Adopt	4-1-2010
837-085-0190	2-1-2010	Amend	3-1-2010	839-005-0170	2-24-2010	Adopt	4-1-2010
837-085-0200	2-1-2010	Amend	3-1-2010	839-005-0195	2-24-2010	Amend	4-1-2010
837-085-0210	2-1-2010	Amend	3-1-2010	839-005-0200	2-24-2010	Amend	4-1-2010
837-085-0220	2-1-2010	Amend	3-1-2010	839-005-0205	2-24-2010	Amend	4-1-2010
837-085-0230	2-1-2010	Amend	3-1-2010	839-005-0206	2-24-2010	Adopt	4-1-2010
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837-085-0260	2-1-2010	Amend	3-1-2010	839-005-0220	2-24-2010	Amend	4-1-2010
837-085-0270	2-1-2010	Amend	3-1-2010	839-006-0200	2-24-2010	Amend	4-1-2010
837-085-0280	2-1-2010	Amend	3-1-2010	839-006-0202	2-24-2010	Adopt	4-1-2010
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837-085-0300	2-1-2010	Amend	3-1-2010	839-006-0206	2-24-2010	Amend	4-1-2010
837-085-0305	2-1-2010	Amend	3-1-2010	839-006-0212	2-24-2010	Amend	4-1-2010
837-085-0310	2-1-2010	Amend	3-1-2010	839-006-0240	2-24-2010	Amend	4-1-2010
837-085-0340	2-1-2010	Amend	3-1-2010	839-006-0242	2-24-2010	Amend	4-1-2010
837-085-0350	2-1-2010	Amend	3-1-2010	839-006-0244	2-24-2010	Amend	4-1-2010
837-085-0380	2-1-2010	Amend	3-1-2010	839-006-0250	2-24-2010	Amend	4-1-2010
837-090-1145	11-18-2009	Amend	1-1-2010	839-006-0255	2-24-2010	Amend	4-1-2010
839-001-0495	1-1-2010	Amend	1-1-2010	839-006-0265	2-24-2010	Amend	4-1-2010
839-001-0496	1-1-2010	Amend	1-1-2010	839-006-0270	2-24-2010	Amend	4-1-2010
839-001-0515	1-1-2010	Amend	1-1-2010	839-006-0275	2-24-2010	Amend	4-1-2010
839-001-0520	1-1-2010	Amend	1-1-2010	839-006-0280	2-24-2010	Amend	4-1-2010
839-001-0700	1-1-2010	Amend	1-1-2010	839-006-0290	2-24-2010	Amend	4-1-2010

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839-006-0300	2-24-2010	Amend	4-1-2010	839-025-0013(T)	1-1-2010	Repeal	1-1-2010
839-006-0305	2-24-2010	Amend	4-1-2010	839-025-0015	1-1-2010	Amend	1-1-2010
839-006-0307	2-24-2010	Adopt	4-1-2010	839-025-0020	1-1-2010	Amend	1-1-2010
839-006-0330	2-24-2010	Amend	4-1-2010	839-025-0020(T)	1-1-2010	Repeal	1-1-2010
839-006-0332	2-24-2010	Adopt	4-1-2010	839-025-0030	1-1-2010	Amend	1-1-2010
839-006-0335	2-24-2010	Amend	4-1-2010	839-025-0030(T)	1-1-2010	Repeal	1-1-2010
839-006-0435	2-24-2010	Amend	4-1-2010	839-025-0035	1-1-2010	Amend	1-1-2010
839-006-0440	2-24-2010	Amend	4-1-2010	839-025-0035(T)	1-1-2010	Repeal	1-1-2010
839-006-0445	2-24-2010	Amend	4-1-2010	839-025-0085	1-1-2010	Amend	1-1-2010
839-006-0450	2-24-2010	Amend	4-1-2010	839-025-0085(T)	1-1-2010	Repeal	1-1-2010
839-006-0455	2-24-2010	Amend	4-1-2010	839-025-0200	1-1-2010	Amend	1-1-2010
839-006-0460	2-24-2010	Amend	4-1-2010	839-025-0200(T)	1-1-2010	Repeal	1-1-2010
839-006-0465	2-24-2010	Amend	4-1-2010	839-025-0210	1-1-2010	Amend	1-1-2010
839-006-0470	2-24-2010	Amend	4-1-2010	839-025-0210(T)	1-1-2010	Repeal	1-1-2010
839-006-0480	2-24-2010	Adopt	4-1-2010	839-025-0530	1-1-2010	Amend	1-1-2010
839-009-0210	2-24-2010	Amend	4-1-2010	839-025-0530(T)	1-1-2010	Repeal	1-1-2010
839-009-0220	2-24-2010	Amend	4-1-2010	839-025-0700	11-23-2009	Amend	1-1-2010
839-009-0240	2-24-2010	Amend	4-1-2010	839-025-0700	1-1-2010	Amend	2-1-2010
839-009-0245	2-24-2010	Amend	4-1-2010	839-025-0700	1-12-2010	Amend	2-1-2010
839-009-0250	2-24-2010	Amend	4-1-2010	839-025-0700	1-13-2010	Amend	2-1-2010
839-009-0260	2-24-2010	Amend	4-1-2010	839-025-0700	1-19-2010	Amend	3-1-2010
839-009-0265	2-24-2010	Adopt	4-1-2010	839-025-0700	1-27-2010	Amend	3-1-2010
839-009-0270	2-24-2010	Amend	4-1-2010	839-025-0700	4-1-2010	Amend	5-1-2010
839-009-0280	2-24-2010	Amend	4-1-2010	839-025-0700	7-1-2010	Amend	8-1-2010
839-009-0290	2-24-2010	Amend	4-1-2010	839-050-0080	3-3-2010	Amend	4-1-2010
839-009-0300	2-24-2010	Amend	4-1-2010	839-050-0130	3-3-2010	Amend	4-1-2010
839-009-0325	2-24-2010	Amend	4-1-2010	839-050-0140	3-3-2010	Amend	4-1-2010
839-009-0335	2-24-2010	Amend	4-1-2010	839-050-0150	3-3-2010	Amend	4-1-2010
839-009-0340	2-24-2010	Amend	4-1-2010	839-050-0240	3-3-2010	Amend	4-1-2010
839-009-0345	2-24-2010	Amend	4-1-2010	839-050-0370	3-3-2010	Amend	4-1-2010
839-009-0350	2-24-2010	Amend	4-1-2010	839-051-0010	3-3-2010	Amend	4-1-2010
839-009-0355	2-24-2010	Amend	4-1-2010	845-005-0413	3-1-2010	Adopt	4-1-2010
839-009-0360	2-24-2010	Amend	4-1-2010	845-005-0414	3-1-2010	Adopt	4-1-2010
839-009-0362	2-24-2010	Amend	4-1-2010	845-006-0340	5-1-2010	Amend	6-1-2010
839-009-0363	2-24-2010	Amend	4-1-2010	845-006-0380	7-1-2010	Adopt	8-1-2010
839-009-0365	2-24-2010	Amend	4-1-2010	845-007-0020	5-1-2010	Amend	6-1-2010
839-009-0370	2-24-2010	Adopt	4-1-2010	845-009-0150	7-1-2010	Adopt	8-1-2010
839-009-0380	2-24-2010	Adopt	4-1-2010	845-013-0040	7-1-2010	Amend	8-1-2010
839-009-0390	2-24-2010	Adopt	4-1-2010	845-015-0130	5-1-2010	Amend	6-1-2010
839-009-0400	2-24-2010	Adopt	4-1-2010	845-020-0020	3-1-2010	Amend	4-1-2010
839-009-0410	2-24-2010	Adopt	4-1-2010	845-020-0025	3-1-2010	Amend	4-1-2010
839-009-0420	2-24-2010	Adopt	4-1-2010	845-020-0030	3-1-2010	Amend	4-1-2010
839-009-0430	2-24-2010	Adopt	4-1-2010	847-005-0005	1-26-2010	Amend	3-1-2010
839-009-0440	2-24-2010	Adopt	4-1-2010	847-005-0005(T)	1-26-2010	Repeal	3-1-2010
839-009-0450	2-24-2010	Adopt	4-1-2010	847-008-0023	1-26-2010	Amend	3-1-2010
839-009-0460	2-24-2010	Adopt	4-1-2010	847-010-0073	1-26-2010	Amend	3-1-2010
839-010-0100	2-24-2010	Amend	4-1-2010	847-020-0100	4-26-2010	Amend	6-1-2010
839-010-0140	2-24-2010	Amend	4-1-2010	847-020-0130	4-26-2010	Amend	6-1-2010
839-020-0004	6-1-2010	Amend	7-1-2010	847-020-0150	4-26-2010	Amend	6-1-2010
839-020-0050	6-1-2010	Amend	7-1-2010	847-020-0160	4-26-2010	Amend	6-1-2010
839-020-0125	6-1-2010	Amend	7-1-2010	847-020-0183	4-26-2010	Amend	6-1-2010
839-021-0070	1-1-2010	Amend	1-1-2010	847-023-0010	4-26-2010	Amend	6-1-2010
839-021-0280	1-1-2010	Amend	1-1-2010	847-023-0015	4-26-2010	Amend	6-1-2010
839-021-0290	1-1-2010	Amend	1-1-2010	847-026-0000	1-26-2010	Adopt	3-1-2010
839-025-0010	1-1-2010	Amend	1-1-2010	847-026-0000(T)	1-26-2010	Repeal	3-1-2010

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847-026-0005(T)	1-26-2010	Repeal	3-1-2010	851-050-0006	7-1-2010	Amend	2-1-2010
847-026-0010	1-26-2010	Adopt	3-1-2010	851-050-0008	1-1-2010	Adopt	2-1-2010
847-026-0010(T)	1-26-2010	Repeal	3-1-2010	851-050-0010	1-1-2010	Amend	2-1-2010
847-026-0015	1-26-2010	Adopt	3-1-2010	851-050-0138	1-1-2010	Amend	2-1-2010
847-026-0015(T)	1-26-2010	Repeal	3-1-2010	851-050-0138	4-19-2010	Amend(T)	6-1-2010
847-026-0020	1-26-2010	Adopt	3-1-2010	851-050-0142	1-1-2010	Adopt	2-1-2010
847-026-0020(T)	1-26-2010	Repeal	3-1-2010	851-056-0000	1-1-2010	Amend	2-1-2010
847-035-0030	1-26-2010	Amend	3-1-2010	851-056-0006	1-1-2010	Amend	2-1-2010
847-035-0030	4-26-2010	Amend(T)	6-1-2010	851-056-0010	1-1-2010	Amend	2-1-2010
847-035-0030(T)	1-26-2010	Repeal	3-1-2010	851-056-0016	1-1-2010	Amend	2-1-2010
847-050-0020	4-26-2010	Amend(T)	6-1-2010	851-056-0020	1-1-2010	Amend	2-1-2010
847-050-0046	4-26-2010	Adopt	6-1-2010	851-056-0024	1-1-2010	Amend	2-1-2010
848-001-0005	3-1-2010	Amend	4-1-2010	851-061-0090	12-17-2009	Amend	2-1-2010
848-001-0010	3-1-2010	Amend	4-1-2010	851-062-0005	6-25-2010	Repeal	8-1-2010
848-005-0020	3-1-2010	Amend	4-1-2010	851-062-0010	6-25-2010	Amend	8-1-2010
848-005-0030	3-1-2010	Amend	4-1-2010	851-062-0015	6-25-2010	Repeal	8-1-2010
848-010-0015	3-1-2010	Amend	4-1-2010	851-062-0016	6-25-2010	Amend	8-1-2010
848-010-0022	3-1-2010	Amend	4-1-2010	851-062-0020	6-25-2010	Amend	8-1-2010
848-010-0026	3-1-2010	Amend	4-1-2010	851-062-0050	6-25-2010	Amend	8-1-2010
848-035-0020	3-1-2010	Amend	4-1-2010	851-062-0055	6-25-2010	Amend	8-1-2010
848-040-0100	3-1-2010	Amend	4-1-2010	851-062-0070	6-25-2010	Amend	8-1-2010
848-040-0147	3-1-2010	Amend	4-1-2010	851-062-0100	6-25-2010	Amend	8-1-2010
848-045-0020	3-1-2010	Amend	4-1-2010	851-062-0110	6-25-2010	Amend	8-1-2010
848-050-0100	3-1-2010	Repeal	4-1-2010	851-063-0020	6-25-2010	Amend	8-1-2010
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848-050-0120	3-1-2010	Repeal	4-1-2010	851-063-0030	6-25-2010	Amend	8-1-2010
850-005-0190	5-3-2010	Adopt	6-1-2010	851-063-0035	12-17-2009	Amend	2-1-2010
850-050-0120	6-30-2010	Amend	8-1-2010	851-063-0035	6-25-2010	Amend	8-1-2010
850-050-0130	6-30-2010	Amend	8-1-2010	851-063-0040	6-25-2010	Repeal	8-1-2010
850-060-0220	2-16-2010	Amend	4-1-2010	851-063-0050	6-25-2010	Repeal	8-1-2010
850-060-0220	5-3-2010	Amend	6-1-2010	851-063-0060	6-25-2010	Repeal	8-1-2010
850-060-0225	1-1-2010	Amend	1-1-2010	851-063-0090	12-17-2009	Amend	2-1-2010
850-060-0226	1-1-2010	Amend	1-1-2010	851-063-0090	4-19-2010	Amend(T)	6-1-2010
850-060-0226	6-30-2010	Amend	8-1-2010	851-070-0000	7-1-2010	Adopt(T)	8-1-2010
851-002-0010	1-1-2010	Amend	2-1-2010	851-070-0005	7-1-2010	Adopt(T)	8-1-2010
851-002-0010	6-25-2010	Amend	8-1-2010	851-070-0010	7-1-2010	Adopt(T)	8-1-2010
851-002-0020	1-1-2010	Amend	2-1-2010	851-070-0020	7-1-2010	Adopt(T)	8-1-2010
851-002-0035	1-1-2010	Amend	2-1-2010	851-070-0030	7-1-2010	Adopt(T)	8-1-2010
851-002-0040	1-1-2010	Amend	2-1-2010	851-070-0040	7-1-2010	Adopt(T)	8-1-2010
851-002-0040	6-25-2010	Amend	8-1-2010	851-070-0050	7-1-2010	Adopt(T)	8-1-2010
851-010-0024	1-21-2010	Adopt(T)	3-1-2010	851-070-0060	7-1-2010	Adopt(T)	8-1-2010
851-010-0024	4-21-2010	Adopt	6-1-2010	851-070-0070	7-1-2010	Adopt(T)	8-1-2010
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851-046-0005	7-1-2010	Suspend	8-1-2010	852-010-0080	12-11-2009	Amend	1-1-2010
851-046-0010	7-1-2010	Suspend	8-1-2010	852-020-0035	12-11-2009	Amend	1-1-2010
851-046-0020	7-1-2010	Suspend	8-1-2010	852-020-0060	12-11-2009	Amend	1-1-2010
851-046-0030	7-1-2010	Suspend	8-1-2010	852-050-0006	12-11-2009	Amend	1-1-2010
851-046-0040	7-1-2010	Suspend	8-1-2010	855-006-0005	6-29-2010	Amend	8-1-2010
851-050-0000	1-1-2010	Amend	2-1-2010	855-007-0010	12-24-2009	Amend	2-1-2010
851-050-0001	1-1-2010	Amend	2-1-2010	855-007-0020	12-24-2009	Amend	2-1-2010
851-050-0002	7-1-2010	Amend	2-1-2010	855-007-0030	12-24-2009	Amend	2-1-2010
851-050-0004	1-1-2010	Amend	2-1-2010	855-007-0040	12-24-2009	Amend	2-1-2010

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855-007-0050	12-24-2009	Amend	2-1-2010	855-041-6420	4-30-2010	Adopt	6-1-2010
855-007-0060	12-24-2009	Amend	2-1-2010	855-041-6500	4-30-2010	Adopt	6-1-2010
855-007-0080	12-24-2009	Amend	2-1-2010	855-041-6510	4-30-2010	Adopt	6-1-2010
855-007-0090	12-24-2009	Amend	2-1-2010	855-041-6520	4-30-2010	Adopt	6-1-2010
855-007-0100	12-24-2009	Amend	2-1-2010	855-041-6530	4-30-2010	Adopt	6-1-2010
855-007-0110	12-24-2009	Amend	2-1-2010	855-041-6540	4-30-2010	Adopt	6-1-2010
855-007-0120	12-24-2009	Amend	2-1-2010	855-041-6550	4-30-2010	Adopt	6-1-2010
855-011-0005	6-29-2010	Adopt(T)	8-1-2010	855-041-6560	4-30-2010	Adopt	6-1-2010
855-011-0020	6-29-2010	Adopt(T)	8-1-2010	855-041-6570	4-30-2010	Adopt	6-1-2010
855-011-0030	6-29-2010	Adopt(T)	8-1-2010	855-041-6600	4-30-2010	Adopt	6-1-2010
855-011-0040	6-29-2010	Adopt(T)	8-1-2010	855-041-6610	4-30-2010	Adopt	6-1-2010
855-011-0050	6-29-2010	Adopt(T)	8-1-2010	855-041-6620	4-30-2010	Adopt	6-1-2010
855-019-0100	6-29-2010	Amend	8-1-2010	855-043-0001	2-8-2010	Am. & Ren.	3-1-2010
855-019-0120	4-30-2010	Amend	6-1-2010	855-043-0003	2-8-2010	Adopt	3-1-2010
855-019-0130	4-30-2010	Amend	6-1-2010	855-043-0110	2-8-2010	Amend	3-1-2010
855-019-0150	4-30-2010	Amend	6-1-2010	855-043-0120	2-8-2010	Am. & Ren.	3-1-2010
855-019-0200	6-29-2010	Amend	8-1-2010	855-043-0130	2-8-2010	Amend	3-1-2010
855-019-0205	6-29-2010	Adopt	8-1-2010	855-043-0130	5-4-2010	Amend(T)	6-1-2010
855-019-0240	6-29-2010	Amend	8-1-2010	855-043-0210	2-8-2010	Amend	3-1-2010
855-019-0250	6-29-2010	Amend	8-1-2010	855-043-0300	2-8-2010	Amend	3-1-2010
855-019-0300	6-29-2010	Amend	8-1-2010	855-043-0310	2-8-2010	Amend	3-1-2010
855-019-0310	6-29-2010	Amend	8-1-2010	855-044-0001	6-29-2010	Adopt	8-1-2010
855-025-0020	6-29-2010	Amend	8-1-2010	855-044-0005	6-29-2010	Adopt	8-1-2010
855-025-0050	6-29-2010	Amend	8-1-2010	855-044-0010	6-29-2010	Adopt	8-1-2010
855-031-0005	4-30-2010	Amend	6-1-2010	855-044-0020	6-29-2010	Adopt	8-1-2010
855-031-0010	4-30-2010	Amend	6-1-2010	855-044-0030	6-29-2010	Adopt	8-1-2010
855-031-0015	4-30-2010	Repeal	6-1-2010	855-044-0040	6-29-2010	Adopt	8-1-2010
855-031-0020	4-30-2010	Amend	6-1-2010	855-044-0050	6-29-2010	Adopt	8-1-2010
855-031-0030	4-30-2010	Amend	6-1-2010	855-044-0060	6-29-2010	Adopt	8-1-2010
855-031-0033	4-30-2010	Repeal	6-1-2010	855-044-0070	6-29-2010	Adopt	8-1-2010
855-031-0040	4-30-2010	Repeal	6-1-2010	855-044-0080	6-29-2010	Adopt	8-1-2010
855-031-0045	4-30-2010	Amend	6-1-2010	855-044-0090	6-29-2010	Adopt	8-1-2010
855-031-0050	4-30-2010	Amend	6-1-2010	855-062-0003	12-24-2009	Adopt	2-1-2010
855-031-0055	4-30-2010	Amend	6-1-2010	855-062-0003(T)	12-24-2009	Repeal	2-1-2010
855-041-0120	4-30-2010	Repeal	6-1-2010	855-062-0005	12-24-2009	Adopt	2-1-2010
855-041-0125	4-30-2010	Repeal	6-1-2010	855-062-0005(T)	12-24-2009	Repeal	2-1-2010
855-041-0130	4-30-2010	Repeal	6-1-2010	855-062-0020	12-24-2009	Adopt	2-1-2010
855-041-0132	4-30-2010	Repeal	6-1-2010	855-062-0020(T)	12-24-2009	Repeal	2-1-2010
855-041-0600	7-9-2010	Amend(T)	8-1-2010	855-062-0030	12-24-2009	Adopt	2-1-2010
855-041-0640	7-9-2010	Adopt(T)	8-1-2010	855-062-0030(T)	12-24-2009	Repeal	2-1-2010
855-041-4000	2-8-2010	Adopt	3-1-2010	855-062-0040	12-24-2009	Adopt	2-1-2010
855-041-4005	2-8-2010	Adopt	3-1-2010	855-062-0040(T)	12-24-2009	Repeal	2-1-2010
855-041-6050	4-30-2010	Adopt	6-1-2010	855-062-0050	12-24-2009	Adopt	2-1-2010
855-041-6100	4-30-2010	Adopt	6-1-2010	855-062-0050(T)	12-24-2009	Repeal	2-1-2010
855-041-6150	4-30-2010	Adopt	6-1-2010	855-065-0001	12-24-2009	Amend	2-1-2010
855-041-6200	4-30-2010	Adopt	6-1-2010	855-065-0005	12-24-2009	Amend	2-1-2010
855-041-6220	4-30-2010	Adopt	6-1-2010	855-065-0006	12-24-2009	Amend	2-1-2010
855-041-6240	4-30-2010	Adopt	6-1-2010	855-080-0020	6-29-2010	Amend	8-1-2010
855-041-6250	4-30-2010	Adopt	6-1-2010	855-080-0021	6-29-2010	Amend	8-1-2010
855-041-6260	4-30-2010	Adopt	6-1-2010	855-080-0022	6-29-2010	Amend	8-1-2010
855-041-6270	4-30-2010	Adopt	6-1-2010	855-080-0028	6-29-2010	Amend	8-1-2010
855-041-6300	4-30-2010	Adopt	6-1-2010	855-080-0055	6-29-2010	Amend	8-1-2010
855-041-6305	4-30-2010	Adopt	6-1-2010	855-080-0085	6-29-2010	Amend	8-1-2010
855-041-6310	4-30-2010	Adopt	6-1-2010	855-080-0105	6-29-2010	Amend	8-1-2010
855-041-6400	4-30-2010	Adopt	6-1-2010	855-110-0003	12-24-2009	Adopt	2-1-2010
855-041-6410	4-30-2010	Adopt	6-1-2010	855-110-0003(T)	12-24-2009	Repeal	2-1-2010

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855-110-0005	5-4-2010	Amend(T)	6-1-2010	858-050-0150	1-8-2010	Repeal	2-1-2010
855-110-0005	6-29-2010	Amend	8-1-2010	860-022-0041	6-28-2010	Amend	8-1-2010
855-110-0005(T)	6-29-2010	Repeal	8-1-2010	860-033-0006	5-18-2010	Amend	7-1-2010
855-110-0007	12-24-2009	Amend	2-1-2010	860-033-0007	5-18-2010	Amend	7-1-2010
855-110-0007	6-29-2010	Amend	8-1-2010	860-033-0008	5-18-2010	Amend	7-1-2010
855-110-0010	12-24-2009	Amend	2-1-2010	860-036-0010	11-24-2009	Amend	1-1-2010
855-110-0015	3-1-2010	Amend	3-1-2010	860-036-0030	11-24-2009	Amend	1-1-2010
856-010-0015	4-27-2010	Amend	6-1-2010	860-084-0000	6-1-2010	Adopt	7-1-2010
856-010-0027	4-27-2010	Adopt	6-1-2010	860-084-0010	6-1-2010	Adopt	7-1-2010
858-010-0001	1-8-2010	Amend	2-1-2010	860-084-0020	6-1-2010	Adopt	7-1-2010
858-010-0005	1-8-2010	Amend	2-1-2010	860-084-0030	6-1-2010	Adopt	7-1-2010
858-010-0007	1-8-2010	Amend	2-1-2010	860-084-0040	6-1-2010	Adopt	7-1-2010
858-010-0010	1-8-2010	Amend	2-1-2010	860-084-0050	6-1-2010	Adopt	7-1-2010
858-010-0015	1-8-2010	Amend	2-1-2010	860-084-0060	6-1-2010	Adopt	7-1-2010
858-010-0016	1-8-2010	Adopt	2-1-2010	860-084-0070	6-1-2010	Adopt	7-1-2010
858-010-0017	1-8-2010	Adopt	2-1-2010	860-084-0080	6-1-2010	Adopt	7-1-2010
858-010-0018	1-8-2010	Adopt	2-1-2010	860-084-0100	6-1-2010	Adopt	7-1-2010
858-010-0020	1-8-2010	Amend	2-1-2010	860-084-0120	6-1-2010	Adopt	7-1-2010
858-010-0025	1-8-2010	Amend	2-1-2010	860-084-0130	6-1-2010	Adopt	7-1-2010
858-010-0030	1-8-2010	Amend	2-1-2010	860-084-0140	6-1-2010	Adopt	7-1-2010
858-010-0034	1-8-2010	Adopt	2-1-2010	860-084-0150	6-1-2010	Adopt	7-1-2010
858-010-0036	1-8-2010	Amend	2-1-2010	860-084-0160	6-1-2010	Adopt	7-1-2010
858-010-0037	1-8-2010	Adopt	2-1-2010	860-084-0170	6-1-2010	Adopt	7-1-2010
858-010-0038	1-8-2010	Adopt	2-1-2010	860-084-0180	6-1-2010	Adopt	7-1-2010
858-010-0039	1-8-2010	Adopt	2-1-2010	860-084-0190	6-1-2010	Adopt	7-1-2010
858-010-0041	1-8-2010	Amend	2-1-2010	860-084-0195	6-1-2010	Adopt	7-1-2010
858-010-0050	1-8-2010	Amend	2-1-2010	860-084-0200	6-1-2010	Adopt	7-1-2010
858-010-0055	1-8-2010	Amend	2-1-2010	860-084-0210	6-1-2010	Adopt	7-1-2010
858-010-0060	1-8-2010	Amend	2-1-2010	860-084-0220	6-1-2010	Adopt	7-1-2010
858-010-0065	1-8-2010	Amend	2-1-2010	860-084-0230	6-1-2010	Adopt	7-1-2010
858-020-0015	1-8-2010	Amend	2-1-2010	860-084-0240	6-1-2010	Adopt	7-1-2010
858-020-0025	1-8-2010	Amend	2-1-2010	860-084-0250	6-1-2010	Adopt	7-1-2010
858-020-0035	1-8-2010	Amend	2-1-2010	860-084-0260	6-1-2010	Adopt	7-1-2010
858-020-0045	1-8-2010	Amend	2-1-2010	860-084-0270	6-1-2010	Adopt	7-1-2010
858-020-0055	1-8-2010	Amend	2-1-2010	860-084-0280	6-1-2010	Adopt	7-1-2010
858-020-0065	1-8-2010	Amend	2-1-2010	860-084-0300	6-1-2010	Adopt	7-1-2010
858-020-0085	1-8-2010	Amend	2-1-2010	860-084-0310	6-1-2010	Adopt	7-1-2010
858-030-0005	1-8-2010	Amend	2-1-2010	860-084-0320	6-1-2010	Adopt	7-1-2010
858-040-0015	1-8-2010	Amend	2-1-2010	860-084-0330	6-1-2010	Adopt	7-1-2010
858-040-0020	1-8-2010	Adopt	2-1-2010	860-084-0340	6-1-2010	Adopt	7-1-2010
858-040-0025	1-8-2010	Amend	2-1-2010	860-084-0350	6-1-2010	Adopt	7-1-2010
858-040-0026	1-8-2010	Adopt	2-1-2010	860-084-0360	6-1-2010	Adopt	7-1-2010
858-040-0035	1-8-2010	Amend	2-1-2010	860-084-0365	6-1-2010	Adopt	7-1-2010
858-040-0036	1-8-2010	Amend	2-1-2010	860-084-0370	6-1-2010	Adopt	7-1-2010
858-040-0055	1-8-2010	Amend	2-1-2010	860-084-0380	6-1-2010	Adopt	7-1-2010
858-040-0065	1-8-2010	Amend	2-1-2010	860-084-0390	6-1-2010	Adopt	7-1-2010
858-040-0075	1-8-2010	Repeal	2-1-2010	860-084-0400	6-1-2010	Adopt	7-1-2010
858-040-0085	1-8-2010	Repeal	2-1-2010	860-084-0420	6-1-2010	Adopt	7-1-2010
858-040-0095	1-8-2010	Repeal	2-1-2010	860-084-0430	6-1-2010	Adopt	7-1-2010
858-050-0100	1-8-2010	Repeal	2-1-2010	860-084-0440	6-1-2010	Adopt	7-1-2010
858-050-0105	1-8-2010	Repeal	2-1-2010	860-084-0450	6-1-2010	Adopt	7-1-2010
858-050-0110	1-8-2010	Repeal	2-1-2010	863-014-0000	1-1-2010	Amend	1-1-2010
858-050-0120	1-8-2010	Repeal	2-1-2010	863-014-0003	1-1-2010	Amend	1-1-2010
858-050-0125	1-8-2010	Repeal	2-1-2010	863-014-0005	1-1-2010	Amend	1-1-2010
858-050-0140	1-8-2010	Repeal	2-1-2010	863-014-0005	7-1-2010	Repeal	7-1-2010

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863-014-0015	1-1-2010	Amend	1-1-2010	863-024-0000	1-1-2010	Amend	1-1-2010
863-014-0020	7-1-2010	Amend	7-1-2010	863-024-0003	1-1-2010	Amend	1-1-2010
863-014-0030	1-1-2010	Amend	1-1-2010	863-024-0005	7-1-2010	Repeal	7-1-2010
863-014-0035	7-1-2010	Amend	7-1-2010	863-024-0015	1-1-2010	Amend	1-1-2010
863-014-0038	1-1-2010	Repeal	1-1-2010	863-024-0030	1-1-2010	Amend	1-1-2010
863-014-0040	7-1-2010	Amend	7-1-2010	863-024-0045	7-1-2010	Amend	7-1-2010
863-014-0042	1-1-2010	Amend	1-1-2010	863-024-0050	7-1-2010	Amend	7-1-2010
863-014-0050	7-1-2010	Amend	7-1-2010	863-024-0055	7-1-2010	Repeal	7-1-2010
863-014-0055	1-1-2010	Amend	1-1-2010	863-024-0065	7-1-2010	Amend	7-1-2010
863-014-0055	7-1-2010	Repeal	7-1-2010	863-024-0075	1-1-2010	Amend	1-1-2010
863-014-0063	1-1-2010	Amend	1-1-2010	863-024-0085	1-1-2010	Amend	1-1-2010
863-014-0065	1-1-2010	Amend	1-1-2010	863-024-0100	1-1-2010	Amend	1-1-2010
863-014-0065	7-1-2010	Amend	7-1-2010	863-049-0000	1-1-2010	Adopt	1-1-2010
863-014-0085	1-1-2010	Amend	1-1-2010	863-049-0005	1-1-2010	Adopt	1-1-2010
863-014-0090	1-1-2010	Adopt	1-1-2010	863-049-0010	1-1-2010	Adopt	1-1-2010
863-014-0095	1-1-2010	Amend	1-1-2010	863-049-0015	1-1-2010	Adopt	1-1-2010
863-014-0100	1-1-2010	Amend	1-1-2010	863-049-0020	1-1-2010	Adopt	1-1-2010
863-014-0160	1-1-2010	Amend	1-1-2010	863-049-0030	1-1-2010	Adopt	1-1-2010
863-015-0000	1-1-2010	Amend	1-1-2010	863-049-0035	1-1-2010	Adopt	1-1-2010
863-015-0003	1-1-2010	Amend	1-1-2010	863-049-0040	1-1-2010	Adopt	1-1-2010
863-015-0150	1-1-2010	Amend	1-1-2010	863-049-0045	1-1-2010	Adopt	1-1-2010
863-015-0186	1-1-2010	Amend	1-1-2010	863-049-0055	1-1-2010	Adopt	1-1-2010
863-015-0188	1-1-2010	Amend	1-1-2010	863-050-0035	1-1-2010	Am. & Ren.	1-1-2010
863-015-0210	1-1-2010	Amend	1-1-2010	863-050-0150	1-1-2010	Amend	1-1-2010
863-015-0250	1-1-2010	Amend	1-1-2010	863-050-0240	1-1-2010	Am. & Ren.	1-1-2010
863-015-0255	1-1-2010	Amend	1-1-2010	875-010-0045	5-6-2010	Amend	6-1-2010
863-015-0260	1-1-2010	Amend	1-1-2010	875-015-0030	5-6-2010	Amend	6-1-2010
863-015-0275	1-1-2010	Amend	1-1-2010	875-030-0010	5-6-2010	Amend	6-1-2010
863-020-0000	7-1-2010	Adopt	7-1-2010	877-010-0000	1-15-2010	Amend	2-1-2010
863-020-0005	7-1-2010	Adopt	7-1-2010	877-010-0045	1-15-2010	Amend	2-1-2010
863-020-0007	7-1-2010	Adopt	7-1-2010	877-020-0009	1-15-2010	Amend	2-1-2010
863-020-0008	7-1-2010	Adopt	7-1-2010	877-020-0030	1-15-2010	Amend	2-1-2010
863-020-0010	7-1-2010	Adopt	7-1-2010	877-020-0057	1-15-2010	Adopt	2-1-2010
863-020-0015	7-1-2010	Adopt	7-1-2010	877-025-0016	1-15-2010	Amend	2-1-2010
863-020-0020	7-1-2010	Adopt	7-1-2010	877-025-0021	1-15-2010	Amend	2-1-2010
863-020-0025	7-1-2010	Adopt	7-1-2010	877-030-0040	1-15-2010	Amend	2-1-2010
863-020-0030	7-1-2010	Adopt	7-1-2010	877-030-0040	7-1-2010	Amend(T)	8-1-2010
863-020-0035	7-1-2010	Adopt	7-1-2010	877-035-0000	7-1-2010	Suspend	8-1-2010
863-020-0040	7-1-2010	Adopt	7-1-2010	877-035-0010	7-1-2010	Suspend	8-1-2010
863-020-0045	7-1-2010	Adopt	7-1-2010	877-035-0012	7-1-2010	Suspend	8-1-2010
863-020-0050	7-1-2010	Adopt	7-1-2010	877-035-0013	7-1-2010	Suspend	8-1-2010
863-020-0055	7-1-2010	Adopt	7-1-2010	877-035-0015	7-1-2010	Suspend	8-1-2010
863-020-0060	7-1-2010	Adopt	7-1-2010	877-040-0000	7-1-2010	Amend(T)	8-1-2010
863-020-0065	7-1-2010	Adopt	7-1-2010	877-040-0003	1-15-2010	Amend	2-1-2010
863-022-0000	7-1-2010	Adopt	7-1-2010	877-040-0003	7-1-2010	Amend(T)	8-1-2010
863-022-0005	7-1-2010	Adopt	7-1-2010	877-040-0010	7-1-2010	Amend(T)	8-1-2010
863-022-0010	7-1-2010	Adopt	7-1-2010	877-040-0016	1-15-2010	Adopt	2-1-2010
863-022-0015	7-1-2010	Adopt	7-1-2010	877-040-0018	7-1-2010	Adopt(T)	8-1-2010
863-022-0020	7-1-2010	Adopt	7-1-2010	918-001-0036	7-1-2010	Amend(T)	8-1-2010
863-022-0025	7-1-2010	Adopt	7-1-2010	918-001-0200	5-1-2010	Repeal	6-1-2010
863-022-0030	7-1-2010	Adopt	7-1-2010	918-001-0210	1-1-2010	Amend	2-1-2010
863-022-0035	7-1-2010	Adopt	7-1-2010	918-005-0010	1-1-2010	Amend	2-1-2010
863-022-0040	7-1-2010	Adopt	7-1-2010	918-020-0090	4-1-2010	Amend	4-1-2010
863-022-0045	7-1-2010	Adopt	7-1-2010	918-040-0000	1-1-2010	Amend	2-1-2010
863-022-0050	7-1-2010	Adopt	7-1-2010	918-098-1000	7-1-2010	Amend	6-1-2010

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918-098-1012	4-1-2010	Amend	4-1-2010	918-440-0510	7-1-2010	Amend	6-1-2010
918-098-1015	4-1-2010	Amend	4-1-2010	918-460-0000	7-1-2010	Amend	6-1-2010
918-098-1015	7-1-2010	Amend	6-1-2010	918-460-0010	7-1-2010	Amend	6-1-2010
918-098-1020	7-1-2010	Amend	6-1-2010	918-460-0015	7-1-2010	Amend	6-1-2010
918-098-1025	7-1-2010	Amend	6-1-2010	918-460-0016	7-1-2010	Repeal	6-1-2010
918-098-1028	7-1-2010	Adopt	6-1-2010	918-460-0050	7-1-2010	Amend	6-1-2010
918-098-1210	4-1-2010	Amend	4-1-2010	918-460-0500	7-1-2010	Adopt	6-1-2010
918-098-1210	7-1-2010	Amend	6-1-2010	918-460-0510	7-1-2010	Adopt	6-1-2010
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918-098-1315	7-1-2010	Amend	6-1-2010	918-500-0055	4-1-2010	Amend	4-1-2010
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